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# **The Law Relating to Elections.**

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THE  
LAW RELATING TO ELECTIONS

BEING

*A Summary and Analysis of the Electoral  
Rules in force in British India*

*With Commentaries*

BY

DANIEL CHAMIER,

BARRISTER-AT-LAW.

BOMBAY:  
PRINTED AT THE TIMES PRESS.

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## SECTION 1.

### General Introduction:

It is provided by Section 63 of the Government of India Act that, subject to the provisions of that Act, the Indian Legislature shall consist of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly.

The Council of State, by Section 63 A, is to consist of not more than sixty members, nominated or elected, in accordance with the rules made under the Act, of whom not more than twenty are to be official members.

The Legislative Assembly, by Section 63 B, is to consist of members nominated or elected according to rules made under the Act. The total number of members is to be one hundred and forty, of whom forty will be non-elected, twenty six of these forty being official. But power is given for the promulgation of rules for increasing the number of members of the Legislative Assembly, which rules may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members and at least one-third of the other members shall be non-official members.

Section 64 of the Act empowers rules to be made as to (a) the term of office of nominated members of the Council of State and the Legislative Assembly and the manner of filling casual vacancies occurring by reason of absence of members from India; inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; or (b) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Council; and (c) the qualification of electors, the constitution of constituencies and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matters incidental or ancillary thereto; and (d) the qualifications for being and for being nominated or elected as members of the Council of State or the Legislative Assembly; and (e) the final decision of doubts and disputes as to the validity of an election; and (f) the manner in which the rules are to be carried into effect.

It is also provided by clause 2 of the section that subject to any rules, any person who is a ruler or subject of any State in India may be nominated as a member of the Council of State or the Legislative Assembly.

Section 72-A provides for a Legislative Council in every Governor's Province, which is to consist of the members of the Executive Council and of the members nominated or elected as provided by the Act. The number of members of the Governors' Legislative Councils are to be in accordance with the table set out in Schedule I to the Act. And of the members of each Council, not more than 20

per cent. are to be official members and at least 70 per cent. are to be elected members.

The table set out in Schedule I gives the numbers of members of the Governors' Legislative Councils as follows: Madras 118, Bombay 111, Bengal 125 United Provinces 118, Punjab 83, Bihar and Orissa, 98, Central Provinces 70 Assam 53.

Rules may, however, be made, to provide for increasing the number of members of any Council, subject to the maintenance of the above proportions. Rules may also be made, subject to the same condition, to provide for the term of office of nominated members of Governors' Legislative Councils and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted or otherwise and the conditions under which and manner in which persons may be nominated as members of Governors' Legislative Councils, and the qualification of electors, the constitution of constituencies, and the method of election for Governors' Legislative Councils, including the number of members to be elected by communal and other electorates and any matters incidental or ancillary thereto, and the qualifications for being and for being nominated or elected a member of any such council, and the final decision of doubts or disputes as to the validity of any election, and the manner in which the rules are to be carried into effect.

Section 72-B provides that every Governor's Legislative Council shall continue for three years from its first meeting, but it may be dissolved sooner by the Governor, who may also extend the period for a period not exceeding one year if in special circumstances he thinks fit to do so.

Section 73 deals with the Councils of Lieutenant-Governors and its provisions are similar in effect to those relating to Governors' Legislative Councils. The number of members nominated or elected and other matters are to be governed by similar rules, but the numbers nominated or elected are not to exceed one hundred and at least one-third of the persons nominated or elected must be non-officials, and under section 77 (2) the provisions of the Act relating to Legislative Councils of Lieutenant-Governors may be extended to any province for the time being under a Chief-Commissioner.

Section 80-B provides that an official shall not be qualified for election as a member of a local legislative council, and if any non-official member whether elected or nominated accepts any office in the service of the Crown in India, his seat shall become vacant. But for the purposes of this provision a minister is not to be deemed to accept office on appointment as minister.

Referring to the Electoral Rules Sir Courtenay Ilbert, in his three recently published Lectures on the New Constitution of India, writes as follows: Those interested in constitutional experiments could with great advantage study the code of electoral rules under the Act of 1919, and might be advised to begin their study by taking some part of British India with which they happen to be acquainted and seeing how the rules are applied there. For instance, a student might begin with the Bengal Rules and the Schedules attached to them and discover which is

meant by general constituencies and by special constituencies such as the landholder's constituency or the commerce and industry constituency. He will find that, while an elector who has the qualification of a vote in special constituencies may exercise the vote for as many constituencies of that class as he is qualified for, he can only vote in one "general constituency" and even in that constituency his vote must be given by him, not as a citizen, but in some special capacity, such as that of non-Mohammedan, Mohammedan, European or Anglo Indian.

Lord Meston, in his second lecture in the same volume, refers thus to the electorate created under the new constitution : In effect the number of voters admitted to the provincial franchise is approximately  $5\frac{1}{2}$  millions or  $2\frac{1}{2}$  per cent. of the population of the 8 provinces. (His figures are based on the census of 1911.) Even this is the expression of a very low qualification. In one province which we may take as typical, every person whose income is £ 13-6-8, or whose house rent is £2-8-0 or who cultivates land at a rental of £3-6-8, or who owns land which pays revenue of half that amount, is eligible as a voter ; and so is every retired officer, N. C. O. or soldier of the regular forces.

And referring to the provincial legislature he says :—I can best describe it by taking one exemplar province. It has a council of 121 members. Of these, 60 are elected by Hindus, 29 by Moslems, 1 by Europeans, 6 by landholders, 3 by Chambers of Commerce and 1 by a University, or 100 members in all. The other 21 members consist of 2 Executive Councillors and 19 persons who may be officials, one a representative of the domiciled Anglo-Indian community, one of the Indian Christians, and one of what is known as the depressed classes, the humble, useful folk who are outside the pale of the Hindu caste system. In some provinces there are other 'fancy' constituencies, nominated representatives of labour, of aboriginal races, and so on.

Referring to the Legislative Assembly, or, as he terms it, the Lower House he says :—It consists of 144 members : 104 elected, 26 officials and 14 non-officials nominated by the Viceroy. Of the elected members, 47 represent Hindus, 28 Moslems, 8 Europeans, 2 Sikhs, 6 the land-holding classes and 2 Indian Commerce ; while there are 4 members for Burma, 1 for Berar, 1 for Delhi, and 5 'fancy constituencies'. The franchise is higher than for the provincial legislatures. In the province which I formerly used as an exemplar, the qualifications are an income of £66-13-4 or a house-rent of £12, or the holding of land which is rented or taxed at £10 a year.

Referring to the Council of State, or as he terms it, the "Upper House" he says :—It is 60 strong, with 34 elected members and not more than 20 officials, the remainder being private persons nominated by the Viceroy. The constituencies are on somewhat similar racial and territorial lines to those in the Lower House, but the franchises are quite different. In the first place the property qualifications are high, an income of £666 or the payment of half that sum in land revenue is required in the province I have cited before, and still higher figures obtain in some of the others. In the second place, certain personal qualifications are accepted, learning, as proved by fellowship of a University or membership of its Senate ;

experience in public affairs acquired in a Legislature or as chairman or vice-chairman of a Municipal or District Board; or commercial ability, as shown by having been president of a Chamber of Commerce or of a Co-operative Central Society. The purpose was to secure an electorate with a senatorial mind and councillors with the qualities of the Elder Statesmen.

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On 14th September 1920 Act XXXIX of 1920, received the assent of the Governor General, entitled The Indian Elections Offences and Inquiries Act, 1920. Part I comprises a series of amendments to The Indian Penal Code and Code of Criminal Procedure which provide for the punishment of malpractices in connection with elections and for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act. The provisions of the Act are more fully dealt with in the Section relating to election petitions.

For the purposes of Part I of the Act the word "Election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority of whatever character, the method of selection to which is by or under, any law prescribed as by election.

The word "Candidate" means a person who has been nominated as a candidate and includes a person who holds himself out as a prospective candidate if subsequently nominated.

Part I of the Act deals with the offences of bribery, undue influence at elections and personation at elections. These are defined and made punishable. "Treating" is (in effect) defined as a form of bribery by giving food, drink, entertainment or provision, but the punishment for it is limited to fine.

It is also made an offence to publish false statements in relation to the personal character or conduct of candidates which are known or believed to be false or are not believed to be true with intent to affect the result of an election.

Another offence is to incur or authorize expenses for public meetings, advertisements, circulars or publications or in any other way without the general or special authority in writing of a candidate.

Persons who are required by law or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election and fail to keep such accounts are also penalized. Part II of the Act deals with election enquiries and other matters and is dealt with hereafter in the Section relating to Election Petitions.

Persons convicted of bribery or undue influence or who have been disqualified from exercising any electoral right for a period of not less than 5 years for malpractices in connection with an election, are disqualified for 5 years from the date of the conviction or disqualification from accepting judicial office, or being elected to any office of any local authority when the appointment is by election or holding or exercising any such office to which no salary is attached, or acting as a member of any local authority, or as a trustee of a public trust. But powers are given for the exemption of a person from such disqualifications. The

last provision in Part II is that which penalizes officers, clerks, agents or others performing duties in connection with elections if they fail to maintain the secrecy of the voting.

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Electoral Rules have in due course been promulgated under the Act.

The principal Electoral Rules were issued from the Reforms Office under date 27th July 1920, as No. 767-F and were published in *The Gazette of India Extraordinary*, dated 29th July 1920.

Considerable and important amendments were made to the Electoral Rules by a further or supplementary series of Rules, dated 5th June 1923, No. F 213-23 and published in *The Gazette of India Extraordinary*, dated 9th June 1923, and the Rules so amended were published in July 1923.

These rules may be said to present in a codified form the gist and general effect of the English Statute and common law relating to Elections.

A separate series of rules relates to each elected body, but on material points governing elections they are similar, and are divided into 8 parts and 5 Schedules.

These general rules are intended to be supplemented by local Regulations which either are in force or may be made in each province. These are to govern the form and manner of making nominations, and their scrutiny; the appointment of Returning Officers and their powers and duties; the division of general constituencies into polling areas and the appointment of polling stations and officers to preside at them and their duties, the checking of voters by reference to the Electoral Roll, the manner in which votes are to be given, the procedure to be followed in respect of tender of votes by persons representing themselves to be electors after other persons have voted in their names, the scrutiny of votes, the safe custody of ballot papers and other election papers and the conduct of elections generally.

These local regulations may be modified and adapted by the Governor-General in Council and proportional representation may be provided for by resolution, and single member constituencies may be grouped together so as to make new plural member constituencies.

The Electoral Rules comprise separate sets of 48 rules each which relate severally to The Council of State, The Legislative Assembly and the Legislative Councils of Madras, Bombay, Bengal, United Provinces, Punjab, Bihar and Orissa, Central Provinces and Assam.

A separate set of rules relating to Berar also dated 27th July 1920 and numbered as No. 2217-I-D was also published in the *Gazette of India Extraordinary*, dated 29th July 1920, and these resemble the principal Electoral Rules in all material particulars excepting those which relate exclusively to the locality.

The principal points of difference between the several sets of rules are those relating to the composition of the Council of State and Assembly and Governors Councils contained in Part I of each set; those relating to the qualifications of Elected Members, contained in clause 6 of Part II of each set; the lists of constituencies contained in Schedule I of each set; and the qualifications of electors in the several provinces, contained in Schedule II of each set.

The Rules and Schedules dealing with these matters must necessarily be appropriate to each locality.

It is not intended to here reproduce the rules and local regulations *in extenso* because they are easily obtainable in each province.

The rules will, however, be summarised and analysed and references will be made to the Regulations issued in Bombay and Madras as typical of the matters which are intended to be governed by such regulations.

### **The Electoral Rules.**

R. 1. is general.

R. 2. This rule contains definitions as follows:—

- (a) . “ The Act ” means the Government of India Act.
- (b) “ Commissioners ” means the Commissioners appointed for the purpose of holding an election inquiry under these Rules.
- (c) “ Corrupt Practice ” means any act deemed to be a corrupt practice under the provisions of Schedule V.
- (d) “ Election agent ” means the person appointed under these Rules by a candidate as his agent for an election.
- (e) “ Gazette ” means the *Gazette of India*, and
- (f) “ Schedule ” means a Schedule to these Rules.

## SECTION 2.

### **The Elected Bodies.**

**RULES 3 & 4.** This subject is dealt with in Part I and Schedule I of the rules for each elected body. The Parts and Schedules naturally differ so as to be appropriate to each body. The Part I in each set of Rules specifies the number of members which each body is to be composed of and refers to the Schedule I in each set of Rules as specifying the various constituencies and the number of members to be elected by each constituency. These can be summarized as follows :—

#### *The Council of State.*

This is to consist of 33 elected members and 27 members nominated by the Governor-General of whom not more than 20 may be officials and one is to be a person nominated as the result of an election held in Berar. The elected members are to be elected by the constituencies specified in Schedule I relating to the Council of State, subject to the provisions of that Schedule in regard to constituencies entitled to elect in rotation.

The term “official” as used in the Electoral Rules has been defined, in effect, by Rules made under the Government of India Act for the definition of “non-officials”, by which certain persons are not to be treated as “officials” for the purposes of that Act. Rule 2 is as follows:—The holder of any office in the Civil or Military service of the Crown which does not involve both of the following incidents, namely, that the incumbent (a) is a whole-time servant of the Government and (b) is remunerated either by salary or fees, shall not be treated as an “official” for any of the purposes of the Government of India Act.

And any question that may arise will be finally decided by the Governor-General in Council.

The constituencies specified in Schedule I can be summarized as follows, the number of members being shown after the name of each Province:—Madras 5 ; Bombay 6 ; Bengal 6 ; United Provinces 5 ; Punjab 2 ; Bihar and Orissa 3 ; Central Provinces 1 ; Burma 2 ; and in rotation :—Punjab and Behar 2 ; Ajmer-Merwara ; Assam 1 ; Total 34. But the Governor-General may divide into 2 or more constituencies any of the plural member constituencies and may distribute the seats among the new constituencies so created.



*The Legislative Assembly.*

This is to consist of 103 elected members and 41 members nominated by the Governor-General of whom 26 are to be officials and one is to be a person nominated as the result of an election held in Berar.

The elected members are to be elected by the constituencies specified in Schedule I relating to the Legislative Assembly and subject to the same provisions as to rotation.

The constituencies specified in Schedule I can be summarized as follows, the number of members being shown after the name of each Province :—Madras 16 ; Bombay 12 ; Bengal 16 ; United Provinces 16 ; Punjab 12 ; Behar and Orissa 12 ; Central Provinces 5 ; Assam 4 ; Burma 4 ; Delhi 1 ; Ajmer-Merwara and in rotation, Bombay 4 ; Bengal 1. Total 104. The same power to divide constituencies is given.

*Madras Legislative Council.*

This is to consist of the members of the Executive Council, *ex-officio*, 98 elected members, and such members nominated by the Governor as, with the addition of the Members of the Executive Council, shall amount to 29 ; the members nominated comprising not more than 19 officials and not less than 6 non-officials, representing special classes : namely :—5 to represent Paraiyans, Pallans, Valluvans, Malas, Madigas, Chakkiliyans, Tottiyans, Cheruman and Holeyas ; and 1 to represent the inhabitants of backward tracts. The Governor may at his discretion make regulations providing for the selection of these members by the communities concerned.

The elected members are to be elected by the constituencies specified in Schedule I relating to the Madras Legislative Council, and the local government has the same power to divide constituencies.

*Bombay Legislative Council.*

This is to consist of the members of the Executive Council, *ex-officio* ; 86 elected members and such number of members

nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to 25. Of the official members so nominated not more than 16 may be officials and 5 shall be non-official persons nominated to represent respectively the following classes:—

- (1) the Anglo-Indian community,
- (2) the Indian Christian community,
- (3) the labouring classes,
- (4) classes which in the opinion of the Governor are depressed classes, and
- (5) the cotton trade.

The elected members are to be elected by the constituencies specified in Schedule I relating to the Bombay Legislative Council and the local government has the same power to divide constituencies.

*The Bengal Legislative Council.*

This is to consist of the members of the Executive Council *ex-officio* ; 113 elected members ; and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to 26. Of the members so nominated not more than 18 may be officials and not less than 6 shall be non-officials ; and 2 are to be persons nominated to represent respectively the following classes or interests namely:—(1) the Indian Christian community, and (2) classes which in the opinion of the Governor are depressed classes, and 2 are to be persons nominated to represent the labouring classes.

The elected members are to be elected by the constituencies specified in Schedule I relating to the Bengal Legislative Council and the local government has the same power to divide constituencies.

*United Provinces Legislative Council.*

This is to consist of the members of the Executive Council *ex-officio* ; 100 elected members ; and such number of members

nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to 23 ; of the members nominated not more than 16 may be officials and 3 are to be persons nominated to represent respectively the following classes of interests :—(1) the Anglo-Indian community, (2) the Indian Christian community, (3) the classes which in the opinion of the Governor are depressed classes.

The elected members are to be elected by the constituencies specified in Schedule I relating to the United Provinces Legislative Council and the local government has the same power to divide constituencies.

*The Punjab Legislative Council.*

This is to consist of the members of the Executive Council *ex-officio* ; 71 elected members ; and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to 22 ; of the members nominated not more than 14 may be officials, and 4 are to be persons nominated to represent the following classes, according to the following distribution :—(1) The European and Anglo-Indian communities 2 ; (2) the Indian Christian community 1 ; (3) the Punjabi officers and oldiers His of Majesty's Indian Forces 1.

The elected members are to be elected by the constituencies specified in Schedule I relating to the United Provinces Legislative Council.

*Bihar and Orissa Legislative Council.*

This is to consist of the members of the Executive Council *ex-officio* ; 76 elected members ; and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to 27 ; of the members nominated not more than 18 may be officials and 9 are to be persons nominated to represent the classes or interests according to the following distribution:—(1) Aborigines 2 ; (2) Classes which are in the opinion of the Governor depressed

classes 2 ; (3) Industrial interests other than planting and mining 1 ; (4) the Bengali community domiciled in the Province 1 ; (5) the Anglo-Indian community 1 ; (6) the Indian Christian community 1 ; (7) the labouring classes 1.

The elected members are to be elected by the constituencies specified in Schedule I relating to the Bihar and Orissa Legislative Council.

*Central Provinces Legislative Council.*

This is to consist of members of the Executive Council *ex-officio* ; 37 elected members ; and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to 33 ; of the members nominated not more than 8 may be officials, and 17 are to be persons nominated as the result of elections held in Berar ; and 5 are to be persons nominated to represent the classes following according to the following distribution :—(1) The inhabitants of the Mandla District excluding Mandla town 1 ; (2) the inhabitants of such Zamindari and Jagidari estates as are excluded under Schedule I from the area of any constituency 1 ; (3) the European and the Anglo-Indian community 1 ; (4) classes which in the opinion of the Governor are depressed classes 2 .

But until the re-constitution of the Council next following the date on which a University is established at Nagpur the number of elected members is to be 36, and the number of persons nominated by the Governor is to be 32, of whom 1 is to be nominated to represent University education in the Central Provinces.

The elected members are to be elected by the constituencies specified in Schedule I relating to the Central Provinces Legislative Council ; but the provisions in the rule regarding the University constituency referred to in Schedule I are only to have effect for the purposes of the General elections next following the date on which a University is constituted at Nagpur.

*The Assam Legislative Council.*

This is to consist of the members of the Executive Council *ex-officio*; 39 elected members; and such number of members appointed by the Governor as, with the addition of the members of the Executive Council, shall amount to 14; of the members nominated not more than 7 may be officials and 2 shall be non-official persons nominated to represent the following classes :—  
(1) The labouring classes; (2) the inhabitants of backward tracts.

For the purpose of selecting the last 2 nominated persons the Governor may at his discretion make regulations providing for the selection by the communities concerned.

The elected members are to be elected by the constituencies specified in Schedule I relating to the Assam Legislative Council.

*Elections in Berar.*

These elections are to take place in Berar of persons to be nominated to the Council of State, the Legislative Assembly, and the Central Provinces Legislative Council.

By Part I rule 3 (1) the persons to be elected for nomination to the Council of State and the Legislative Assembly are to be elected by the Council of State constituency and the Legislative Assembly constituency specified in Schedule I of the Berar Electoral Rules, and by rule 3 (2), the members to be elected for nomination to the Legislative Council are to be elected by the Legislative Council constituencies specified in that Schedule.

## SECTION 3.

### **General Qualifications of Elected and Nominated Members.**

This subject is dealt with in Parts II and V of each set of Electoral Rules which are common to all the elected bodies, excepting as to rule 6 of Part II in each which deals with the special qualifications requisite for each elected body and is therefore different in each set of rules.

Rules 5 and 22 :—A person is not eligible for election or nomination if he (a) is not a British subject or (b) is a female or (c) is a member and has been affirmed as a member of the Council or (d) is a dismissed or suspended legal practitioner or (e) has been adjudged by a competent court to be of unsound mind or (f) is under 25 years of age or (g) is an undischarged insolvent or (h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

The disqualification arising from not being a British subject may be relieved against so far as Rulers or subjects of States in India are concerned, if they are otherwise eligible for election to the Legislative Council of a Province or to the Delhi constituency and the disqualification of being a dismissed or suspended legal practitioner may be removed by the Governor-General in Council or local Government, as the case may be.

Rajaputana subjects are eligible for Ajmer.

A person is not eligible against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for more than 6 months is subsisting, unless the offence of which he was convicted has been pardoned. This disqualification however only continues for five years from the date of the expiration of the sentence.

A person is not eligible if he has been convicted of an offence under the new Chapter IX A of the Penal Code punishable with imprisonment for more than 6 months or if he has been reported as guilty by an election court of a corrupt practice as

specified in Part I or in paras. 1, 2, or 3 of Part II of Schedule V of the Electoral Rules. The disqualification lasts for 5 years from the date of the conviction or the report of the Commissioners. The disqualification may, however, be removed by the Governor-General or local Government, as the case may be.

In Bombay a Notification has been issued by the Local Government relieving against the disqualification of not being a British subject in the cases contemplated above.

The corrupt practices specified in Part I of Schedule V are:—Bribery; undue influence; personation; publication of false statements; and authorization of prohibited expenditure committed by a candidate or his agent or with the connivance of either candidate or agent.

The practices specified in paras. 1, 2 and 3 of Part II of Schedule V comprise acts specified in Part I but not done by a candidate or agent or with their connivance; and also personation and bribery not abetted by the candidate or agent.

If a person has been reported by an election court to be guilty of any other corrupt practice he is similarly disqualified for 3 years from the date of the report. Such other corrupt practices will comprise payment for conveyances, hiring and using public conveyances, incurring expenses without authority, hiring liquor shops and the issue of circulars, placards or posters without imprint.

The exact words in the Rule are "Which does not bear on its face the name and address of the printer and publisher thereof"

It is doubtful whether this expression could be construed as referring only to printed matter because of the use of the word "publisher." Granting that in as much as a circular issued in manuscript has no printer, it would be impossible to place the name and address of its printer on its face, still such a circular could be "published" and should at least bear the name and address of its publisher. All kinds of type-written matter and matter reproduced in numbers by mechanical process would stand on the same footing. The term "printing" obviously includes a number of forms of multiplying an original besides merely printing from type. For example a circular can be "printed" by the process of etching from zinc or copper plates or by lithography; and it could be "printed" out by means of one or other of the processes in which the action of the sun or chemicals is utilised.

A person is not eligible for election if he has been a candidate at an election to any legislative body constituted under the Government of India Act and failed at that election to lodge within time and in manner prescribed the necessary return of election expenses or has lodged a return which is found by an election court or by a Magistrate in a judicial proceeding to be

false in any material particular. The disqualification lasts for 5 years from the date of that election.

This disqualification may also be removed by the Governor-General in Council or local Government, as the case may be.

Rule 23. A nominated non-official member holds office for the duration of the Council to which he is nominated.

Official members hold office for the same period or such shorter period as the Governor-General or the Governor may determine.

In the Berar Electoral rules special qualifications for election are contained in Part II and these resemble generally the qualifications in Part II of the Electoral Rules.



## SECTION 4.

### **Special Qualifications of Elected Members.**

This subject is also dealt with in Part II of each set of Electoral Rules, Rule 5 in that part deals with general qualifications for Election and is common to all the elected bodies.

Rule 6, however, differs in each set of Rules, because it deals with the special qualifications for Election requisite for each elected body. In other words Rule 6 sets out the special qualifications for election of members appropriate to each separate body, and these naturally differ from each other. These qualifications may be summarized as follows:—

#### *Council of State.*

**GENERAL CONSTITUENCY.**—The requisites of eligibility to represent a general constituency are:—

- (a) Entry of name on roll of a general constituency in the Province if the member is to represent a general constituency in the United Provinces or in Assam.
- (b) Entry of name on roll of the constituency or of another constituency in the same province if the member is to represent a general constituency in Madras, Bombay, Bengal, the Punjab or Bihar and Orissa.
- (c) Entry of name on roll of the constituency if the member is to represent a general constituency in the Central Provinces or in Burma.

**SPECIAL CONSTITUENCY.**—No one is eligible to represent a special constituency unless his name is entered on the Electoral roll of the constituency.

A special constituency is defined as meaning a European Commerce constituency ; and a general constituency as meaning

any constituency specified in Schedule 1 of the Rules other than a European Commerce constituency.

*Legislative Assembly.*

**GENERAL CONSTITUENCY.**—The requisites of eligibility to represent a general constituency other than one in the Province of Burma, Ajmere-Merwara or Delhi, are :—

- (a) Entry of name on roll of the constituency or of a constituency situated in the same province and prescribed for elections to the Provincial Council by rules under Section 72A of the Government of India Act and the candidate.
- (b) Must be a Mahomedan, or a non-Mahomedan, or a Sikh or a European if he stands for corresponding constituencies in Madras, Bombay, Bengal, the Punjab, Bihar and Orissa or Central Provinces (referred to hereafter as “appropriate religious qualifications.”)

**SPECIAL CONSTITUENCY.**—No one is eligible to represent a “special constituency” or one in Burma, Ajmere-Merwara or Delhi unless his name is on its roll.

A “general constituency” is defined as meaning a non-Mahomedan, Mahomedan, European, non-European, or Sikh or Ajmere-Merwara constituency or the Delhi constituency ; and a “special constituency” means a landholders’ or Indian Commerce constituency.

The effect of clause (a) appears to be that even if a person’s name is not included in the Electoral Roll of the Legislative Assembly itself, he may be eligible for election as a member of the Legislative Assembly if his name is included in the Electoral Roll of the Provincial Legislative Council.

*Madras Legislative Council.*

**GENERAL CONSTITUENCY.**—The requisites of eligibility to represent a general constituency are :—

- (a) Entry of name on roll of the constituency or of any other constituency in the province ; with appropriate religious qualifications ;

**SPECIAL CONSTITUENCY.**—As in the Legislative Assembly.

A “general constituency” is defined as meaning a non-Mohamedan, Mahomedan, Indian Christian, European or Anglo-Indian constituency ; and a “special constituency” as meaning a Landholders’, University, Planters’ or Commerce and Industry constituency.

*Bombay Legislative Council.*

**GENERAL CONSTITUENCY.**—The requisites of eligibility to represent a general constituency are :—

- (a) As in Madras ;
- (b) residence in the constituency for which he desires to be elected for a period of six months prior to the late date fixed for nominations ; or in a division, any part of which is included in the constituency.
- (c) Appropriate religious qualification.

**SPECIAL CONSTITUENCY.**—As in the Legislative Assembly.

A “general constituency” is defined as meaning a non-Mahomedan, Mahomedan or European constituency and a “special constituency” as meaning a Landholders’, University or Commerce and Industry constituency.

*Bengal Legislative Council.*

**GENERAL CONSTITUENCY.**—As in Madras ; with appropriate religious qualification. \*

**SPECIAL CONSTITUENCY.**—As in the Legislative Assembly.

A “general constituency” is defined as in Bombay Legislative Council, with the addition of “Anglo-Indian constituency;” and “special constituency” is as in Bombay Legislative Council.

*United Provinces Legislative Council.*

GENERAL CONSTITUENCY.—As in Madras except for the European constituency.

SPECIAL CONSTITUENCY.—As in the Legislative Assembly.

A “general constituency” is defined as in Bengal; and a “special constituency” as meaning a Taluqdars, Agra Landholders, University, or Commerce and Industry constituency.

*The Punjab Legislative Council.*

GENERAL CONSTITUENCY.—(a) As in Madras; appropriate religious qualifications.

SPECIAL CONSTITUENCY.—As in the Legislative Assembly.

A “general constituency” is defined as meaning a non-Mahomedan, Mahomedan or Sikh constituency; and a “special constituency” as in Bombay.

*Bihar and Orissa Legislative Council.*

GENERAL CONSTITUENCY.—As in Madras; with appropriate religious qualifications.

SPECIAL CONSTITUENCY.—As in the Legislative Assembly.

A “general constituency” is defined as in Bombay; and a “special constituency” means a Landholders, University, Planting or Mining constituency.

*Central Provinces Legislative Council.*

GENERAL CONSTITUENCY.—(a) As in Madras; (b) has a place of residence in a district, any part of which is included in the constituency, or, in the case of an urban constituency, in any such district within 2 miles of the constituency; with appropriate religious qualifications.

**SPECIAL CONSTITUENCY.**—As in the Legislative Assembly.

“Place of residence” means actual dwelling in a house or part of a house for not less than 180 days in the year preceding that in which the current electoral roll was published; or maintenance for that period of a house as a dwelling for himself in charge of his dependants or servants which he has visited during that year.

**GENERAL CONSTITUENCY.**—Means a non-Mahomedan or Mahomedan constituency and a “special constituency” means a Landholders, University, Mining or Commerce and Industry constituency.

*Assam Legislative Council.*

**GENERAL CONSTITUENCY.**—As in Madras in the case of Shillong or a non-Mahomedan or Mahomedan rural constituency.

**SPECIAL CONSTITUENCY.**—Means a Planting or Commerce and Industry constituency as in Legislative Assembly.

## SECTION 5.

### **The Electoral Roll Generally.**

This subject is dealt with in Part III and Schedule II of each set of Electoral Rules.

Part III is common to all the elected bodies ; excepting as to Rule 8 in each set, which deals with the different qualifications of the electors of each elected body. Schedule II in each set of Rules is different for each elected body and must necessarily be so because it defines the constituencies for each.

Rule 7 is common to all elected bodies and by it every person is entitled to have his name registered on the Electoral Roll of a constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the following disqualifications :—(a) is not a British subject or (b) is a female, or (c) has been adjudged by a competent court to be of unsound mind ; or (d) is under 21 years of age.

But if a Ruler or subject of a State in India is not disqualified for registration on the roll of a constituency of a Legislative Council of a Province, he is not to be disqualified by reason of his not being a British subject ; and each Legislature is empowered to remove the sex disqualification, either in respect of women generally or any class of women.

Rajputana subjects may be on Ajmer roll.

In Bombay and Madras the disqualification of sex in an elector has been removed.

But no one is entitled to have his name registered on the roll of more than one general constituency.

An elector's name is to be removed from the electoral roll for a period of 5 years if he is convicted of an offence under the new Chapter IX A of the Penal Code punishable with imprisonment for more than 6 months or is reported by an election petition Court as guilty of any of the corrupt practices specified in Part I or in paras. 1 and 2, or 3 of Part II of Schedule V. These have been set out under rule 5 *supra*.

If a person is reported for any other corrupt practice his name is to be removed for a period of 3 years.

If an elector's name is not already on the electoral roll and he is convicted or reported in manner set out, his name is not to be registered for the period mentioned. But the Governor-General in Council may direct the enrolment of the elector.

**Rule 9.** An electoral roll is to be prepared for every constituency containing the names of persons appearing to be entitled to be registered as electors. This is to be published with a notice specifying how persons whose names are not entered and who have claims to be entered, or whose names are entered and who object to the inclusion of their own names or of the names of other persons, may prefer claims or objections to the Revising Authority.

2. Local Regulations of each Province for elections to its Legislative Council are to apply to elections to the Council of State in regard to the following matters :—

1. The authority by whom the electoral roll is to be prepared and the particulars to be contained in it;
2. The time at which it is to be prepared ;
3. The publication of the roll ;
4. How claims and objections should be preferred;
5. The appointment of Revising Authorities ;
6. The manner in which notices of claims or objections should be published ; and
7. The hearing of such claims and objections.

But the Governor-General in Council may modify or adapt such regulations.

3. The orders of the Revising Authority are final, and the electoral roll is to be amended in accordance therewith and republished.

4. The roll comes into force from the date of such republication, and continues in force for 3 years and after the expiration of that period a fresh roll is prepared; but the Governor-General or local Government may direct a fresh roll to be prepared at any time before the 3 years have expired.

5. If a constituency is called upon to elect a member after an electoral roll has ceased to have any force and before the completion of a new one, the old roll is to be utilised.

6. But notwithstanding the rules set out above, any one may apply to an authority appointed by the Governor-General in Council or Local Government for the purpose for the amendment of an electoral roll and the Governor-General in Council or Local Government may direct the preparation of a list of amendments and the Authority appointed may after enquiry amend an entry accordingly.

7. The electoral roll in question is thus deemed to be amended.

Rule 10. Every one registered on an electoral roll for the time being in force is entitled to a vote, provided that no one is to vote at any general election in more than one general constituency and no one is to vote at any election if he is subject to any disability stated in Rule 7; and if anyone is proved during the hearing of an election petition to have voted in contravention of these provisos his vote is to be void.

The personal qualifications of electors in England are thus set out in 12 Hals. 139 published in 1910, since when, of course, changes have been made in relation to the legal incapacities of women:—

“To entitle a person to have his name placed upon the register it is necessary that he should be of full age, and that he should not be subject to any legal incapacity. Every female is subject, at common law, to an incapacity which prevents her from having a right to vote at a parliamentary election; and when a statute gives a right to a “man” having certain qualifications to be registered as a parliamentary voter, this word must be construed as synonymous with “male,” although the general rule of interpretation of statutes is, that, unless a contrary intention appears, words importing the masculine gender include females. This rule absolutely excluding females from the parliamentary franchise, obtains in counties as well as boroughs; and a female has no *locus standi* to appeal against



a refusal to place her name upon the register. A peer of Parliament is legally incapable of voting at a parliamentary election, even though he is placed upon the register without objection. An alien is subject to a legal incapacity unless a certificate of naturalisation or letters of denization have been granted to him. Lunatics and idiots are subject at common law to an incapacity to vote at an election; but a lunatic may vote at a lucid interval."

Other disabilities exist, of course, as the result of the personal bad character of the voter.

Women in England are now eligible for election as members of Parliament. The movement for reform began in 1918 when a resolution was passed on 23rd October by a large majority of the House of Commons to the effect that it was desirable to pass a Bill forthwith making women eligible.

The right of women in England to vote as electors had already been conferred by the Representation of the People Act, 1918, which came into force on 6th February 1918, by section 8 of which every person registered as a parliamentary elector for any constituency shall, while so registered (and in the case of a woman, notwithstanding her sex or marriage) be entitled to vote at an election of a member to serve in Parliament for that constituency.

## SECTION 6.

### Electors for the Council of State.

The qualifications of electors for the Council of State, as given in detail in Schedule II of the Rules relating to the Council of State, refer to electors in Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma.

*Electors in Madras* are dealt with in Clause 9 of Part I of Schedule II to the Rules for the Council of State which may be summarised as follows:—

A person is qualified as an elector for a general constituency who has resided in the Presidency for not less than 120 days in the previous year and who—

- (a) holds an estate in the Presidency the annual income of which is not less than Rs. 3,000,
- or (b) is registered as a pattadar or inamdar of land in the Presidency on which the assessment, including water-rate, is not less than Rs. 1,500,
- or (c) receives from Government an annual malikana allowance of not less than Rs. 15,000,
- or (d) was assessed to income-tax on his own account in the previous year on an income not less than Rs. 20,000,
- or (e) is or has been a non-official member of either Chamber of the Indian Legislature or of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby or of the Madras Legislative Council,
- or (f) has been the non-official President of the Madras Municipal Council or of a District Board or Taluk Board under the Madras Local Boards Act, 1884, or is the non-official Vice-President of the said Council or of a District Board,
- or (g) is or has been the non-official Chairman or is the non-official Vice-Chairman of a Municipal Council

constituted under the Madras District Municipalities Act, 1884,

- or (h) is or has been a member of a Senate or a Fellow or an Honorary Fellow of any University constituted by law in British India,
- or (i) is the non-official President or Vice-President of any central bank or banking union which is a registered society within the meaning of Section 2 of the Co-operative Societies Act, 1912.
- or (j) is recognised by Government as the holder of the title of Shams-ul-Ulama or the title of Mahamahopadhyaya.

But no one other than a Mahomedan is qualified as an elector for the Mahomedan constituency and no Mahomedan is qualified as an elector for the non-Mahomedan constituency.

*Electors in Bombay* are dealt with in Clause 2 of Part II of Schedule II which may be summarised as follows:—

A person is qualified as an elector for a general constituency who has a place of residence in the constituency and is—

- (a) a Sind Jagirdar 1st or 2nd class, or a Zamindar with Rs. 3,000 revenue averaged over 3 years,
- or (b) a Deccan or Gujerat Sardar,
- or (c) a sole alienee of an assessment of Rs. 2,000 or a Talukadar,
- or (d) a holder of land assessed at Rs. 2,000,
- or (e) was assessed to income-tax in the previous year on an income amounting to Rs. 30,000 or has qualifications corresponding generally to those of (d), (e), (f), (g), (h) and (i) in Madras with the same 2 provisoes.

The qualifications for the special constituency are to be an elector of the Bombay Chamber of Commerce and to have a place of residence in India.

*Electors in Bengal* are dealt with in Clause 4 of Part III of Schedule II which may be summarised as follows:—

General Constituencies.—Non-Mahomedan :—A person is qualified as an elector who is neither a Mahomedan nor a European and who has a place of residence within the constituency and who—

- (a) (1) in the Burdwan or Presidency Division held estates during the previous year in his own right and paid a land revenue of Rs. 7,500 or cesser amounting to Rs. 1,875,
- (2) in Dacca, Rajshahi or Chittagong held similar estates and paid Rs. 5,000 or Rs. 1,250,
- (b) was assessed to income-tax on an income of Rs. 12,000 or member of a firm, his share being assessed to that amount or other qualifications corresponding generally to (e), (f), (g), (h), (i) and (j) in Madras.

Mahomedan : A Mahomedan :— a place of residence within the constituency ; paid Rs. 600 as land revenue or Rs. 125 as cess or assessed to income-tax on an income of Rs. 6,000 or a share so assessed in a firm or has qualifications corresponding generally to (e), (f), (g), (h), (i) and (j) in Madras. Special constituency as in Bombay.

*Electors in the United Provinces* are dealt with in Clause 3 of Part IV of Schedule II which may be summarised as follows:—

A person is qualified as an elector for a general constituency who has a place of residence in the constituency and who—

- (a) owns land in the constituency on which land revenue of Rs. 5,000 is payable,
- or (b) though free of land revenue is assessed at that figure,
- or (c) was assessed to income-tax on an income of Rs. 10,000,
- or (d) has qualifications corresponding generally to (e), (f), (g), (h), (i) and (j) in Madras ; with the same provisoes.

*Electors in the Punjab* are dealt with in Clause 5 of Part V of Schedule II which may be summarised as follows:—

A person is qualified as an elector for a general constituency who resides in it and who is—

(a) the owner or Crown tenant of land assessed at Rs. 750,

or (b) an assignee of land revenue of Rs. 750,

or (c) assessed to income-tax on Rs. 15,000, or is a Provincial Punjab Darbari or has qualifications corresponding generally to (e), (f), (g), (h) and (j) in Madras; with the same provisoes. But no one is qualified as an elector for a Mahomedan constituency who is not a Mahomedan or for a Sikh constituency who is not a Sikh and no Mahomedan or Sikh is qualified as an elector for the non-Mahomedan constituency.

*Electors in Bihar and Orissa* are dealt with in Clause 4 of Part VI of Schedule II which may be summarised as follows:—

A person is qualified as an elector for the non-Mahomedan constituency who is not a Mahomedan and who has a place of residence in the province of Bihar and Orissa and who—

(a) holds an estate in his own right of Rs. 1,200 revenue or Rs. 300 local cess,

or (b) tenures of Rs. 300 local cess,

or (c) was assessed to income-tax on an income of Rs. 12,800 or has qualifications corresponding to (e), (f), (g), (h) and (j) in Madras.

A person is qualified as an elector for a Mahomedan constituency who is a Mahomedan and has a place of residence in the province of Bihar and Orissa and who—

(a) holds land of Rs. 750 revenue or Rs. 187-8-0 local cess,

or (b) tenures of Rs. 187-8-0 local cess,

or (c) was assessed to income-tax on an income of Rs. 6,400 or has qualifications corresponding generally to (e), (f), (g), (h) and (j) in Madras.

*Electors in the Central Provinces* are dealt with in Clause 3 of Part VII of Schedule II which may be summarised as follows:—

A person is qualified as an elector for the Central Provinces constituency who has a place of residence in the constituency and who—

- (a) holds land in proprietary right of a revenue of Rs. 3,000,
- or (b) was assessed to income-tax on an income of Rs. 20,000,
- or (c) has qualifications corresponding generally to (e) (g), (h) or (j) in Madras.

*Electors in Assam* are dealt with in Clause 2 of Part VIII of Schedule II which may be summarised as follows:—

A person is qualified as an elector for either of the general constituencies who has a place of residence in the province of Assam and who—

- (a) is liable for Rs. 2,000 as land revenue or Rs. 200 local rate,
- or (b) was assessed to income-tax on Rs. 12,000 or has qualifications corresponding generally to (e), (g), (h), (i) or (j) in Madras with the same provisos.

*Electors in Burma* are dealt with in Clause 1 of Part IX of Schedule II which may be summarised as follows:—

A person is qualified as an elector for the Burma Constituency who has a place of residence in Burma and who—

- (a) is liable to pay land revenue of Rs. 1,000.
- or (b) was assessed to income-tax on an income of Rs. 5,000 or has qualifications corresponding generally to (e), (g), (h), (i) or (j) in Madras.

A person is qualified as an elector for the Burma Chamber of Commerce constituency who is a member of that Chamber.

The term “place of residence,” would appear to correspond to “place of abode,” which occurs frequently in the Forms provided by the English Acts for the registration of voters. Erle, C. J., in *Courtes v. Blight*, 31 L. J. C. P. 48, said that

what is a "place of abode" within the meaning of those Acts "is rather a question of fact than of law;" and Campbell, C. J., in *R. v. Hammond*, 21 L. J. Q. B. 153, said: A man's residence, where he lives with his family and sleeps at nights, is always his place of abode, in the full sense of that expression.

Erle, C. J., remarked (in *Naef v. Mutter*, 31 L. J. C. P. 359) that the term "residence" has a variety of meanings, according to the statute or document in which it is used. And Cotton, L. J. (in *Re Bowie*, 16 Ch. D. 484), described it as an "ambiguous word" which may receive a different meaning according to the position in which it is found.

Where a house was given as a gift on the condition that the donee should take actual possession of it "as and for his residence and place of abode" and continue during his life to reside there, it was held that he would satisfy the condition by keeping up the house as a place of residence in which he and (or ?) some of the members of his family should occasionally dwell, (*Warner v. Moir*: 25 Ch. D. 605) which case, however, has been commented on as not being reconcilable with an earlier case of *Walcot v. Botfield*, Kay, 534.

The terms "dwelling house" and "part of house separately occupied as a dwelling" have been held not to include a "cubicle" occupied by an officer in a police force though it was exclusively used by him at a police station, (*Clutterbuck v. Taylor* (1896) 1 Q. B. 395). Lopes, L. J., pointed out that the term "dwelling house" as defined in sections of the Parliamentary, etc., Registration Act, 1878, included "any part of a house where that part is separately occupied as a dwelling." He and the Master of the Rolls, however, held that the cubicle in question was not part of a house separately occupied as a dwelling. Rigby, L. J., differed. He admitted that at first sight one might be disposed to say that a cubicle was very different from a dwelling house. But it was obvious that the extraordinary sense in which the term "dwelling house" was used in the statutes relating to the franchise included things that were totally different from anything which would in the ordinary use of language be called a dwelling-house, because any part of a house would suffice if occupied as required by the Act. It did not need to be any particular part of a house and it did not matter how small it might be. The extent or nature of the part occupied was immaterial, so long as it was occupied separately as a dwelling. The cubicle in question was none the less part of the whole police barrack because it was part of a room in it. Whether it constituted what would ordinarily be called a "dwelling-house" was not the question. He referred to the provision in the section to the effect that "where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part." Those words were general and met the contention based on the enjoyment by the occupier of air and light common to the room of which the cubicle formed a part. He also referred to that portion of the section which provided that the term "house, ware-house, counting-house, shop or other building shall include any part of a house where that part is separately occupied for the purpose of any trade, business or profession." If part of a house was in fact separately occupied for the purpose of a trade, business

or profession, the section said that part of a house was to be deemed to be a house. The terms of the section did not afford any ground for the idea that the part of the house must be occupied in the same manner in all respects as that in which traders or professional men ordinarily occupy their houses. In his view the real question was whether the occupier did, in fact, occupy part of a house as a dwelling; not whether he had a right to occupy in the same manner as that in which a person occupies a "dwelling house" in the ordinary sense of the term.

A definition of "residence" is given in Schedule II, Part 2, Clause 4 relating to the Electors of Bombay. A person is deemed to reside in a constituency if (a) he ordinarily lives there, or (b) has his family dwelling in it and occasionally occupies it, or (c) maintains in it a dwelling house ready for occupation in charge of servants and occasionally uses it.



## SECTION 7.

### Electors for the Legislative Assembly.

The qualifications of electors for the Legislative Assembly, as given in detail in Schedule II to the rules relating to the Legislative Assembly, refer to electors from the same provinces as those which elect for the Council of State with the addition of Delhi.

*Electors in Madras* are dealt with in Clauses 6 and 7 of Part I of Schedule II to the rules for the Legislative Assembly which may be summarised as follows :—

Clause 6. A person is qualified as an elector for the Madras city who is neither a Mahomedan nor a European, and who resided in the constituency 120 days in the previous year and who (a) was assessed to Rs. 20 in the aggregate for one or more of the following taxes, namely, property tax, tax on companies or profession tax ; or was assessed to income-tax.

Clause 7:—A person is qualified as an elector for any other general constituency who resided there 120 days in the previous year, and who (a) is registered as a ryotwari pattadar or as an inamdar of land of Rs. 50 annual rental, (b) holds on a registered lease under such a pattadar or (c) is registered under Section 14 of the Malabar Registration Act, 1895, as the occupant jointly with the proprietor of land of similar value, or (d) is a holder of a landed estate of similar value, or (e) holds as ryot land of similar value, or (f) was assessed for Rs. 20 in a municipality for one or more of the following taxes, namely, property tax, tax on companies or profession tax, or (g) was assessed to income-tax ; provided that the religion or race must be appropriate.

The qualifications for special constituencies in Madras are:—For the Landholders' constituency, registration on the roll ; and for the Indian Commerce constituency, residence for 120 days, assessment to income-tax on Rs. 10,000.

*Electors in Bombay* are dealt with in Clauses 6 and 7 of Part II of Schedule II to the rules for the Legislative Assembly which may be summarised as follows :—

Qualifications of an elector :—For a non-Mahomedan or Mohamedan general constituency ; place of residence within the constituency or a contiguous one of the same communal description and (a) in Upper Sind Frontier District held land assessed at Rs. 37-8 and in Sind at Rs. 75 or (b) in other constituencies occupied land assessable at Rs. 37-8-0 in Panch Mahals or Ratnagiri and Rs. 75 elsewhere, or (c) was alienee of land revenue of Rs. 37-8-0 in Panch Mahals, Ratnagiri or Upper Sind Frontier Districts and Rs. 75 elsewhere or a sharer in a Khoti or other village responsible for Rs. 37-8-0 or Rs. 75 respectively as land revenue, or (d) was assessed to income-tax ; with the same racial and religious provisos. For the Bombay European constituency registration on the roll of either European constituency of the Bombay Legislative Council.

Qualifications of an elector :—For the special constituency of the Sind Jagirdars and Zemindars : being a Jagirdar of 1st or 2nd class or a Zemindar paying Rs. 1,000 land revenue; and as an elector for the special constituency of the Deccan and Gujarat Sardars and Inamdars, being alienee of the right of Government to the payment of rent or land revenue for an entire village in Bombay Presidency, excluding Sind and Aden, or holder of such a village on talukdari tenure : and as an elector for constituencies comprising the Indian Merchants' Chamber and Bureau and of the Bombay Mill-owners' Association and of the Ahmedabad Mill-owners' Association, membership of one of those bodies.

*Electors in Bengal* are dealt with in Clauses 4 to 7 of Part III of Schedule II to the Rules for the Legislative Assembly which may be summarised as follows :—

Qualifications of an elector for the Calcutta (non-Mahomedan) constituency :—Being neither a Mahomedan nor a European and having a place of residence in Calcutta as defined in Section 3 (7) of the Calcutta Municipal Act, 1899, and who (a) paid

Rs. 60 as consolidated rate or taxes, and entry of name in Municipal Assessment Book or (b) assessed to income-tax on Rs. 5,000 or having a share so assessed in a firm.

Qualifications for an elector for any other general constituency :—Place of residence in the constituency and (a) payment of Rs. 6,000 consolidated rate, under the Municipal Act, Chapter 12 or as taxes under Chapter 14 and entry of name on Municipal Assessment Book, or (b) payment in Howrah or Cossipur Chitpur Rs. 10 as Municipal taxes or fees or Rs. 5 in other municipalities or cantonments or (c) Rs. 5 as road and public works cesses or (d) or Rs. 5 as Chaukidari tax or Union rate or (e) assessed to income-tax on Rs. 5,000 or share so assessed in a firm, with the same racial and religious provisos.

Qualifications of an elector for the Bengal European constituency :—Being a European and having a place of residence in the constituency; assessment to income-tax on Rs. 12,000 or share so assessed in a firm.

Qualifications for special constituencies are :—Bengal Landholders' constituency: place of residence and holding estates and paying Rs. 4,000 as land revenue or Rs. 1,000 as road and public work cesses. Bengal National Chamber of Commerce, Marwari Association and Bengal Mahajan Sabha :—membership of the particular body.

*Electors in the United Provinces* are dealt with in Clauses 6 and 7 of Part IV of Schedule II to the rules for the Legislative Assembly which may be summarised as follows :—

Qualifications of an elector for general constituency :—A person is qualified as an elector for a non-Mahomedan or Mahomedan urban constituency who is not a European and (1) who has a place of residence in the constituency or within two miles of the boundary thereof, and (a) is owner or tenant of a house or building of a rental of Rs. 180 where a house tax is in force, or (b) was assessed to Municipal tax or on income tax of Rs. 1,000 or (c) is owner or tenant of a house or building

of the rental value of Rs. 180 or (d) has within the constituency any of the qualifications based on the holding of land prescribed of an elector of a rural constituency : or (2) has a place of residence in the constituency and was assessed to income-tax ; with the same racial and religious provisos. For a rural constituency the qualifications are, a place of residence in the constituency and (a) the owning or tenancy of a house or building of a rental value of Rs. 180 in an urban area where a house or building tax is in force or (b) assessment to Municipal tax on Rs. 1,000 in an urban area or (c) owning or tenancy of a house or building of a rental value of Rs. 180 where neither house or building nor Municipal tax is in force or (d) owns land in the constituency on which land revenue of Rs. 150 is payable, or (e) owns land in the constituency free of land revenue if the land revenue nominally assessed on it for the determination of rates amounts to Rs. 150 or (f) being a resident in the hill pattis of Kumana (1) is liable for land revenue or rent of Rs. 25 or (2) owns land there free of land revenue if nominally assessed (as above) at Rs. 25 or (3) owns a free simple estate or (g) a permanent tenure holder or fixed rate tenant or under proprietor or occupancy tenant liable for rent of Rs. 150 or (h) a tenant other than a sub-tenant and pays Rs. 150 or its equivalent in kind, or (i) was assessed to income-tax ; with the same racial and religious provisos.

Clause 8. A person is qualified as an elector for the European constituency who is a European and has a place of residence in the United Provinces of Agra and Oudh and has any of the qualifications prescribed in clauses (d), (e), (f), (g), (h) and (i) of clause 7.

Clause 9. A person is qualified as an elector for the Landholders' constituency who has a place of residence in the constituency and (a) owns land in it on which land revenue of Rs. 5,000 is payable or (b) owns it free of revenue if the nominal revenue is Rs. 5,000. The elector's personal right is alone recognised.

*Electors in the Punjab* are dealt with in Clauses 5 and 6 of Part V of Schedule II to the rules for the Legislative Assembly which may be summarized as follows :—

General Constituencies :—Residence in one and (a) ownership for 12 months of immovable property worth Rs. 15,000 or of an annual rental of Rs. 336 or (b) owns land assessed at Rs. 100 or (c) is the assignee of land revenue of Rs. 100 or (d) is a tenant of crown land of a rental of Rs. 100 or (e) was assessed to income-tax on Rs. 5,000 ; with similar racial and religious provisoes.

Special Landholders' constituency :—Residence in the Punjab and (a) owns land assessed to Rs. 1,000 or (b) is assignee of land revenue of Rs. 1,000.

*Electors in Bihar and Orissa* are dealt with in Clauses 4 and 5 of Part VI of Schedule II to the rules for the Legislative Assembly which may be summarized as follows :—

General Constituencies :—Place of residence and (a) holds an estate whether revenue paying or free of not less value than (1) Rs. 30 in Patna or (2) Rs. 24 in Bhagalpur and Tirhut or (3) Rs. 12 in Orissa and Chota Nagpur or (b) holds a tenure valued for local cess (1) at Rs. 400 in Patna or (2) Rs. 300 in Chota Nagpur or (3) Rs. 300 in Bhagalpur or (4) Rs. 150 in Tirhut or (5) Rs. 100 in Orissa or (c) holds as raiyat and is liable for local cess or rent of (1) Rs. 160 and Rs. 5 in Patna or (2) Rs. 96 and Rs. 3 in Tirhut or (3) Rs. 64 and Rs. 2 in Orissa or (4) Rs. 40 and Rs. 1-4 in Chota Nagpur, Bhagalpur and Monghyr or (5) Rs. 144 and Rs. 1-8 in the Paraganas or (6) Rs. 96 and Rs. 3 in Purana and Santhan Districts or (d) was assessed to income-tax of Rs. 3,840 or (e) Rs. 15 Municipal or cantonment tax ; with similar racial and religious provisoes.

Qualifications for the Landholders' constituency :—Place of residence and liability to pay land revenue or local cess of Rs. 10,000 and Rs. 2,500.

*Electors in the Central Provinces* are dealt with in Clauses 6 and 7 of Part VII of Schedule II to the Rules for the Legislative Assembly which may be summarized as follows:—

General Constituency :—Place of residence and (a) owns or occupies as tenant within an urban area in the constituency a house or building or part of one of which the annual rental value is not less than (1) Rs. 240 in Nagpur or Jubbulpore municipalities and (2) Rs. 180 in any other urban area (with proviso as to shares in houses) or (b) owns or is thakadar of an estate or mahal or share in one the land revenue of which is Rs. 300 or (c) holds as proprietor or thakadar lands (specified) assessee ; or of rental of (1) Rs. 90 in Raupur, Bilaspur, Drug, Chanda and Betul Districts or (2) Rs. 120 in Bhandara, Balaghat, Nimar, Chhindwara and Sioni Districts or (3) Rs. 300 in other districts or (d) was assessed to income-tax : with the same racial and religious qualifications.

Special Landholders' constituency :—Place of residence and (a) holds hereditary and recognised title to the land in proprietary right or (b) owns an estate as defined in Section 2 (3) of the C. P. Land Revenue Act, 1917, or (c) holds land in proprietary right with land revenue of Rs. 5,000.

*Electors in Assam* are dealt with in Clause 3 of Part VIII of Schedule II to the rules for the Legislative Assembly which may be summarized as follows :—

Residence in any constituency and (a) assessment to Municipal or cantonment taxes Rs. 20 or (b) assessment to Rs. 10 in a union under Chapter III of the Bengal Municipal Act, 1876, or (c) assessment to Chankidevi tax of Rs. 10 in Sylhet Cachar or Goalpura District or (d) in any other district (1) owns land of revenue of Rs. 45 or (2) is liable to pay local rate of Rs. 3 or (e) assessed to income-tax on Rs. 3,600 ; with the same racial and religious provisos.

*Electors in Burma* are dealt with in Clauses 2 and 3 of Part IX of Schedule II to the rules for Legislative Assembly which may be summarized as follows :—

The Burma (non-European) constituency ;—not being a European, place of residence in Burma and being (a) an elected

member of the Rangoon Municipal Committee or of any Municipal or Town Committee constituted under the Burma Municipal Act, 1898, or (b) a member of a Circle Board in Burma.

The Burma (European) constituency : being a European resident in Burma and assessed to income-tax.

*Electors in Delhi* are dealt with in Clause 5 of Part X of Schedule II to the rules for the Legislative Assembly which may be summarized as follows :—

Residence in the constituency and (a) ownership of immovable property worth Rs. 15,000 or of the annual rental value of Rs. 336 or tenancy of like property (with provisoes) or (b) ownership of land assessed to land revenue of Rs. 100 or (c) assignee of land revenue of Rs. 100 or (d) tenant or lessee for 3 years of Crown land of rental value of Rs. 100 with a proviso as to harvest assessment or (e) assessed to income-tax at Rs. 5,000.

A "tenant" in the ordinary relationship of landlord and tenant is a "person who holds of another." He does not necessarily "occupy." In order to occupy he must be personally resident of himself or his family.

The assignee of a lessee has been regarded as a 'tenant'; also a 'sub-lessee.'

To occupy as 'tenant' within the Acts conferring Parliamentary franchise involves the idea of some permanent occupation and independent interest and excludes some occupations of less independence, such as of servants for their services, *e.g.*, the porter to a lodge, the gardener to a dwelling in the garden and also such as that of a surgeon to a hospital or room therein, also the occupation of premises by objects of a charity occupying under the trustees of the charity.

Bankruptcy does not deprive a tenant of his status of occupation as 'tenant *qua* the franchise tenant, if in fact his occupation goes on undisturbedly and he continues paying the rent as before.

It has been held however that while the committee of the estate of a lunatic occupied part of the land belonging to the estate and accounted for rent and debited himself with it in the accounts of the estate he did not occupy as a 'tenant' (*Baron v. Longhorn* 5, C.B. 92). The principle is that the man must occupy by virtue of some right in order to be entitled to call himself a tenant.

But either a tenancy at will or a tenancy by sufferance is sufficient to give the right and a person who so holds is a 'tenant' (see cases cited in 12 Hals. 162.)

And it has been held that a man is none the less a 'tenant' even if the contract of tenancy under which he holds is forbidden by statute, because it is the

character of his holding which is looked to and not the legal right to assume that character.

The term 'Building' has been held to include the following :—A row of continuous buildings without internal communications: a wooden structure with boarded sides and a thatched roof supported by wooden posts: a cowhouse substantially built and used for that purpose, a coach-house and stable, adjoining each other but with no internal means of communication.

But where a political agent squatted on a piece of land and built a wooden shed upon it without the permission of the owner of the land it was held not to be a 'building' for the purpose of franchise (see cases cited in 12 Hals. 160.)

And where a portion of a building is separately occupied by a person who is entitled to the sole and exclusive use of it, that sole occupation is not to be deemed to be a joint occupation merely because the occupier is also entitled to the joint use of some other portion of the same premises.

*Electors in Ajmer-Merwara* are dealt with in clause 5 of Part XI of Schedule II to the Rules for the Legislative Assembly.



## SECTION 8.

### **The Electoral Roll for Each Elected Body.**

The qualifications of electors of each separate elected body are dealt with in Rule 8 and Schedule II in each set of Electoral Rules.

Rule 8 in each set of rules defines the qualifications in general terms, but refer more specifically to the corresponding Schedule II for details.

*The Council of State.*—The qualifications referred to in general terms in Rule 8 relating to the Council of State are based on (1) residence, or residence and community and (2) (a) the holding of land, or (b) assessment to or payment of income-tax, or (c) past or present membership of a legislative body, or (d) past or present tenure of office on a local authority, or (e) past or present University distinction, or (f) the tenure of office in a co-operative banking society, or (g) the holding of a title conferred for literary merit: as specified in the corresponding Schedule II.

*Legislative Assembly.*—The qualifications referred to in general terms in Rule 8 relating for the Legislative Assembly are based on (1) community, (2) residence and (3) (a) ownership or occupation of a building, or (b) assessment to or payment of municipal or cantonment rates or taxes or local cesses, or (c) assessment to or payment of income-tax or (d) the holding of land, or (e) membership of a local body; as specified in the corresponding Schedule II.

*Madras Legislative Council.*—The qualifications referred to in general terms in Rule 8 for the Madras Legislative Council are based on (1) community, (2) residence and (3) (a) occupation of a house, or (b) assessment to property tax, tax on companies or profession tax, or (c) assessment to income-tax, or (d) receipt of a military pension, or (e) the holding of land; as specified in the corresponding Schedule II.

*Bombay Legislative Council.*—Rule 8 relating to Bombay is similar to that of Madras except that the occupation mentioned is of a 'building' and the assessment is to income-tax alone.

*Bengal Legislative Council.*—Rule 8 relating to the Bengal Legislative Council is similar to that for Madras except that the occupation is that of a building and the payment is of municipal taxes or fees or of cesses under the Cess Act, 1880, or of the Chaukidari tax or union rate under the Village Chaukidari Act, 1870, or the Bengal Village Self-Government Act, 1919, or of the income-tax on the holding of land.

*United Provinces Legislative Council.*—Rule 8 relating to the United Provinces Legislative Council is similar to Madras, the difference being ownership or tenancy of a building assessment to municipal tax or income-tax.

*Punjab Legislative Council.*—Rule 8 relating to the Punjab Legislative Council differs in the terms of ownership or tenancy of immovable property, assessment to municipal or cantonment or income-tax, the holding of rural office or enjoyment of an assignment of land revenue.

*Bihar Legislative Council.*—Rule 8 relating to the Bihar and Orissa Legislative Council includes the term assessment under Section 118C of the Bengal Local Self-Government Act, 1885.

*Central Provinces Legislative Council.*—Rule 8 relating to the Central Provinces Legislative Council includes the term 'holding of a village office.'

*Assam Legislative Council.*—Rule 8 relating to the Assam Legislative Council differs by excluding the Shillong constituency from the qualification of community and includes assessment to cantonment rates or to tax in a union under Chapter III of the Bengal Municipal Act, 1876, or Chaukidari tax under the Village Chaukidari Act, 1870.

According to a report in the *Times of India* of August 30, 1923, several persons applied to be enrolled as electors for the Legislative Assembly on the ground that they were either shareholders of joint stock companies which had paid income-tax or that they possessed promissory notes on which income-tax had been deducted. The claims are reported to have been disallowed on the ground that the petitioners had not been assessed to income-tax in accordance with the conditions laid down in the electioneering rules.

## **SECTION 9.**

### **The Elections.**

Rule 11. Any one may be nominated as a candidate for election in any constituency for which he is eligible for election under the Electoral Rules.

The local government appoints for each constituency a date for the nomination of candidates, a further date for the scrutiny of nominations and a still further date for a poll, if one is necessary.

Candidates are then to be nominated on nomination papers in the prescribed form; the proposer and seconder of each being persons on the roll and not subject to any disability. The prescribed form is given in Schedule III., which is common to all the sets of Rules.

The nomination paper is to be delivered accompanied by a written declaration that the candidate has appointed or thereby appoints, as his election agent for the election either himself or some particular person who is not disqualified under the Rules for the appointment and who is to be named in the declaration, and no candidate is to be deemed to be duly nominated unless such declaration is delivered along with the nomination paper.

Any nomination paper which is not received by the time appointed will be rejected.

The Returning Officer, on receiving a nomination paper, is to inform those who deliver it to him the time appointed for the scrutiny of nominations and is to number the nomination paper serially, certify on it when it was received and is to affix a notice of it in a conspicuous place in his office.

A candidate may withdraw his candidature within a given time and a candidate who has withdrawn will not be allowed

to cancel the withdrawal or to be renominated as a candidate for the same election.

A notice of withdrawal, if given, is to be similarly affixed in a conspicuous place.

Rule 12. Every candidate must, before nomination, deposit with the Returning Officer the sum of Rs. 500 for the Council of State and Legislative Assembly and Rs. 250 for a Governor's Council in cash or in Government promissory notes of equal value at the market rate of the day: and a candidate is not duly nominated unless the deposit has been made.

The deposit is returned if the candidate duly withdraws his candidature, or if his nomination is refused or if he dies.

The deposit is forfeited if the candidate goes to the poll and is not elected and the votes polled by him do not exceed one-eighth of the total votes if there are two vacancies. It is also forfeited if his votes do not exceed one-eighth of too number polled divided by the number of vacancies, if there are more than two vacancies: but spoiled ballot papers are not to be counted and the candidate can only count first preference votes where proportional representation applies.

The deposit is also forfeited if the candidate is elected but his seat is declared vacant owing to his failure to make the oath or affirmation.

The deposit is returned if the candidate is not elected and the deposit has not been forfeited by failure to poll the requisite minimum.

The deposit is also returned to an elected candidate when he makes the oath or affirmation.

And if a candidate is duly nominated at a general election in more than one constituency, not more than one of his deposits will be returned and the remainder will be forfeited to Government.

Rule 13. If a candidate dies between the dates of scrutiny and poll, the Returning Officer or other person authorized will countermand the poll and report the fact to the local government and all proceedings will be commenced anew in all respects as if for a new election : but no fresh nomination will be necessary in the case of a candidate who stood nominated at the time when the poll was countermanded.

Rule 14. If the number of candidates who are duly nominated and who have not duly withdrawn their candidature in the manner specified exceeds that of the vacancies, a poll is to be taken : but if the candidates equal the vacancies all will be declared elected.

(3) If the candidates are fewer than the vacancies, all such candidates, if any, will be declared elected and the constituency will be called upon to elect a person or persons within a prescribed time. But if a constituency thus called upon fails to elect, it will not be necessary for it to be called upon again.

(4) Votes are to be given by ballot and in general constituencies in person, but the Governor-General or local government may direct that votes may be given otherwise than in person, in the case of any specified general constituency or of any specified part of any general constituency or in respect of any person attending at a polling station in any constituency under orders or authority from the Returning Officer of that constituency. But no votes are to be given by proxy.

(5) In plural member constituencies every elector for the Council of State and the Legislative Assembly is to have as many votes as there are members to be elected, but no elector is to give more than one vote to any one candidate except in the case of the Bombay (non-Mahomedan) constituency. In that constituency the elector may accumulate all his votes on any single candidate, or may distribute them as he pleases.

But in the Madras (non-Mahomedan) constituency the election for the Council of State is to be made according to the

principle of proportional representation, by means of the single transferable vote and votes are to be given in accordance with the regulations. And in elections for the Legislative Assembly a similar procedure will apply to the Bengal (European) constituency.

This clause permits cumulative voting in Bombay and voting according to the principle of proportional representation by means of the single transferable vote in Madras.

By the cumulative vote every voter has as many votes as there are candidates and may give them all to one candidate or dispose of them among the candidates as he pleases. This system enables a group of voters to obtain the representation of a special line of thought or policy, if they desire it and combine for the purpose.

The system of proportional representation with the transferable vote has been adopted in England for the election of public bodies such as Educational authorities, and is authorised in certain cases by the Representation of the People Act, 1918. Under this system, the voter is assured that if the candidate of his first choice did not need his support, or was so unacceptable as to be ruled out in the beginning, his second, or other choice will profit by his vote. His vote will never be wasted in a vast majority or a hopeless minority.

There is no real difficulty or complication in the system, so far as the voter is concerned. If there are any difficulties, they relate to the subsequent count, which is a matter for the returning officer. (*See Anson's Constitutional Law*, Vol I., p. 148).

(6) After the polling, votes are to be counted by or under the supervision of the Returning Officer and each candidate, the election agent of each candidate and one representative of each candidate authorised in writing by him.

(7) After the count, the Returning Officer declares as elected the candidate who has polled the largest number of votes. But in the Madras (non-Mahomedan) constituency the Returning Officer is to determine the candidate who has polled the largest number of votes in accordance with the Regulations.

(8) Where candidates have polled an equal number of votes and the addition of a vote will entitle one of them to be elected, lots are to be drawn in the presence of the Returning Officer and the election determined in that way.

(9) The names of the elected candidates will be published in the Gazette.

Rule 14 differs in some respects in the various sets of Rules. For example, in the Council of State Rules the proviso to Clause 7 states that in the Madras (non-Mahomedan) constituency the Returning Officer is to determine the candidates to whom the largest number of votes have been given in accordance with the regulations made in that behalf.

Clause 7 of Rule 14 of the Rules for the Legislative Assembly has a similar proviso, but it relates to the Bengal (European) constituency.

Clause 7 of Rule 14 of the Madras Electoral Rules has the proviso that if one or more seats are reserved the Returning Officer is to first declare to be elected the non-Brahman candidate or candidates, as the case may be, to whom the largest number of votes has been given.

Clause 7 of Rule 14 of the Bombay Electoral Rules has the proviso that if a seat is reserved the Returning Officer is first to declare to be elected the Mahratta candidate to whom the largest number of votes has been given.

Clause 7 of Rule 14 of the Bengal Electoral Rules has the proviso that in the Presidency and Burdwan (European) constituency the Returning Officer is to determine the candidates to whom the largest number of votes have been given in accordance with the regulations made in that behalf.

There is no similar proviso in the Rules for the United Provinces, Punjab, Bihar and Orissa, the Central Provinces or Assam.

There are some other minor variations appropriate to each set of Rules.

**Rule 16.** Multiple elections are dealt with in this Rule, which, with some necessary variations, is common to all the sets of Rules.

In the Rules for the Council of State and the Legislative Council Rule 16 provides that if any person is elected by more than one constituency he is to choose within 7 days which he will serve and notify the Secretary to the Government of India.

When that choice has been made, the Governor-General will call upon the constituency to elect again.

If the candidate does not make the choice of constituencies his election is to be void and another election will be called for.

In Rule 16 of the Rules for the Governors' Councils if a person is elected by a constituency of the local Legislative Council and by a constituency of the Council of State or the Legislative Assembly the election to the Local Legislative Council will be void and the Governor will call upon the constituency concerned to elect another person.

Rule 16 (2) of the Governors' Provinces also provides that if a person is elected by more than one constituency of the (Local) Legislative Council or by a constituency of that Council and by a constituency of the Legislative Council of another Province, he is to choose within 7 days and give written notice to the Secretaries of the Council or Councils concerned and the other Council will be called upon to elect again.

If the candidate fails to make the choice, his elections will be void and other elections will be called for.



## SECTION 10.

### The Ballot.

This subject is dealt with in Rule 14 which has already been summarized in the Section which relates to Elections.

Frequent references are made in that Rule to the Regulations which are made by each local Government.

These Regulations are referred to in Rule 15, and govern, *inter alia*, the manner in which votes are to be given, both generally and in the case of illiterate voters or voters under physical or other disability ; the division of general constituencies into polling areas, and the appointment of polling stations within those areas ; the appointment of officers to preside at polling stations and their duties and the performance of those duties by others ; the checking of votes by reference to the Electoral Roll ; the procedure to be followed where votes are tendered by persons representing themselves to be electors after other persons have voted as such electors ; the scrutiny of votes, the safe custody of ballot papers and other election papers, and their preservation ; and the conduct of elections generally and the scrutiny of nominations and the manner in which it is to be conducted and the conditions and circumstances in which persons may present objections.

It is impossible to summarize all the local Regulations of each Province, but some representative clauses may be dealt with and the commentaries thereon may be adapted and applied to others.

*Bombay Electoral Regulations.*—Thus, in the case of Bombay, Regulations were published in the “Bombay Government Gazette Extraordinary,” dated June 21st, 1923, Part IV of which deals with voting in Mahomedan and non-Mahomedan constituencies, Part V with voting in European, Landholders and University constituencies, Part VI with the counting of votes and Part VII with the disposal of ballot papers.

A form of ballot paper is also published and is as follows :—

Form of Ballot paper as given in the Regulations published by the Government of Bombay.

FORM OF FRONT OF BALLOT PAPER.

Counterfoil Serial No.

Outer foil front.

Constituency.

Name and symbol of candidate.

Cross.

Number of Polling Station.

Number of Elector on  
Electoral Roll.

Signature of thumb im-  
pression of elector.

Back of counterfoil.

Instructions :

- (1) The number of members for whom you may vote is—————
- (2) Place a cross mark thus X against the name of the candidate, for whom you wish to vote.  
Each of the candidates.
- (3) The mark should be placed against not more than—————

Serial No.

Part IV of the Bombay Regulations deals exhaustively with the procedure to be followed at the time of polling.

The hours of polling on the date fixed for the poll are to be fixed by the local Government and published, the Collector is to select for each constituency in his jurisdiction as many polling stations as he considers necessary and these are published and show the polling areas for which they have been selected; the Collector appoints a presiding officer for each polling station and such other persons called "polling officers" as he thinks necessary.

The presiding officer keeps order at the polling stations, sees that the election is fairly conducted, regulates the number of electors to be admitted at one time, and excludes other persons except polling officers, candidates and one agent of each candidate, police or other public servants on duty, and such other persons as the presiding officer may from time to time admit for the purpose of identifying electors.

The presiding officer has to close the polling station at the appointed hour so as to prevent the admission thereto of voters after that hour, and no ballot paper is to be issued after the closing hour, but an elector who has received his ballot paper before the closing hour is to be allowed a reasonable opportunity to vote.

Polling stations are to be furnished with compartments in which voters can record their votes screened from observation, and materials are to be provided to enable voters to mark the ballot papers and ballot boxes and copies of the electoral rolls applicable to each polling station.

Immediately before the polling commences, the presiding officer at each station is to show the ballot box empty to any one present at the station and is then to lock and seal it for use.

Immediately before a ballot paper is delivered to an elector the number, name and description of the elector, as stated in the electoral roll, is to be called out and the number of the elector is to be entered on the counterfoil and a mark is to be placed in a copy of the electoral roll against the number of the elector to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received. On the counterfoil, entries are made of the constituency, the name or distinctive number of the polling station and the signature or thumb impression of the elector.

The elector, on receiving the ballot paper, then enters a compartment and there marks his paper and folds it up so as to conceal his vote and puts it, so folded, into the ballot box. Electors are to vote and leave without undue delay.

The presiding officer is to assist any elector who is by reason of infirmity or illiteracy unable to vote.

If a presiding officer has reason to doubt the identity of the elector or his right to vote at a particular station he may of his own accord question the elector and he must question him if so required by a candidate or polling agent.

The questions refer to his identity with the entry on the roll and whether the elector has already voted at the present elections in the constituency and at a general election, whether he has already voted at the particular general election then proceeding for the Legislative Council in any other general constituency.

The elector is not to be supplied with a ballot paper if he refuses to answer one of the questions and unless he answers the first in the affirmative, the second in the negative, and (at a general election) the third also in the negative.

The ballot paper is in the form already set out, and the ballot papers are to be serially numbered, the serial number being printed on the counterfoil and on the back of the ballot paper.

Where it appears that some other elector has already voted under the same name, the applicant for a ballot paper may be questioned and then given a paper, which he may mark with his vote, but this paper will not be put in the ballot box and will be kept by the presiding officer in a separate packet. The person tendering the ballot paper must then sign his name and address against the entry in a list kept for the purpose.

If a polling agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the presiding officer may require that person to enter his name and address in a list kept for challenged votes.

If a voter spoils his ballot paper inadvertently he may be given another and the spoiled paper and its counterfoil will be cancelled.

A presiding officer whose duties keep him at a station at which he is not entitled to vote, may obtain a certificate from the Collector and vote there.

After the closing of the polling, the presiding officer makes parcels of and seals in the presence of any candidate or polling agent who may be present, the ballot boxes, the unused ballot papers, the tendered ballot paper, the spoilt ballot papers, the marked copy of the electoral roll, the counterfoils, the list of tendered votes, and the list of challenged votes and delivers them to the Returning Officer. The "Returning Officer" is described in Clause 1 of Part I of the Regulations.

Some special regulations relate to voting in the other constituencies.

Part VI regulates the counting of votes.

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*Madras Electoral Regulations.*—In the case of Madras, Regulations were published in the "Fort St. George Gazette," dated July 17th, 1923, for the conduct of elections for the general and special constituencies of the Madras Legislative Council.

A form of ballot paper is given which is similar in material points to that contained in the Bombay Regulations, but it also contains a form of declaration on the counterfoil (which is entitled the Declaration paper) by which the elector declares that he is an elector for the constituency for which he is about to vote and that he has signed no other ballot paper.

Regulations 11 to 33 relate to the ballot, and under them personal voting is necessary. Regulations 35 to 43 enable electors resident in eight constituencies to vote by post. The eight constituencies are:—Madras Planters, Madras Chamber of Commerce, Southern India Chamber of Commerce, Madras Trades Association, Nattukkottai Nagarathars Association, University of Madras, European and Anglo-Indian.

The procedure laid down for personal voting is similar in material points to that laid down in Bombay.

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The English Ballot Act of 1872, provides the procedure to be followed at parliamentary elections.

Section 2 provides that in case of a poll at an election, the votes shall be given by ballot: the ballot paper is to show the names and description of the candidates; leave a number printed on the back, the same number being printed on the face of the counterfoil. At the time of voting the ballot paper is to be marked on both sides with an official mark and delivered to the voter within the polling station and the number of the votes on the register of voters is to be marked on the counterfoil. The voter then secretly marks his vote, folds the paper so as to conceal his vote, shows the presiding officer the official mark at the back and places the paper in the ballot box.

By the same section a ballot paper is void if it has not on its back the official mark, or if it gives votes to more candidates than the voter is entitled to vote for or if anything except the number on the back is written or marked by which the voter can be identified. In such case the paper is not to be counted.

By Section 12 no person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

By Section 13 no election is to be declared invalid by reason of a non-compliance with the rules contained in the 1st Schedule of the Act, or by any mistake in the use of the forms in that Schedule, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance did not affect the result of the election.

It was held in *Woodward v. Sarson*, L.R. 10, C.P. 733, that ballot papers marked in the following manner did not avoid the vote in the absence of evidence of connivance or pre-arrangement:—

Placing a single stroke slanting or upright in lieu of a cross.

Placing a star instead of a cross.

Placing a cross blurred or marked with a tremulous hand.

Placing a cross on the left hand side of the ballot paper.

Drawing a pencil line through the name of the candidate not voted for.

It was also held that tearing the ballot paper longitudinally through the centre did not avoid the vote.

It was decided in the same case, however, that where a voter placed no cross against the name of a candidate but wrote his own name opposite the name of a candidate the vote was void.

And it was also held that ballot papers were void if they contained votes or marks indicating an intention to vote for more candidates than the voter was entitled to vote for.

The various points decided in *Woodward v. Sarson* (supra) may be illustrated, as follows :—

Name of Candidate.	Cross
A.B.	/
C. D.	

(Upright stroke.)

Good.

A. B.	—
C. D.	

(Slanting stroke.)

Good.

A. B.	× P
C. D.	

(Cross with an imperfect P.)

Good.

A. B.	×
C. D.	


(Cross.)

Good.

A. B.	
C. D.	*

(Star.)

Good.

A. B.	
C. D.	

(Blurred cross.)

Good.

×

A. B.	
C. D.	

(Cross on left hand side of paper.)

Good.

A. B.	
A. D.	

(Pencil line through name of candidate not voted for.)

Good.

A. B.	John Jones
C. D.	

(No cross but elector's name written.)

Void.

A. B.	×
C. D.	×

(Two crosses where the elector is entitled to only 1 vote).

Void.

In the *Thornbury Election Petition*, 16 Q.B. 739, it was held that a ballot paper which conforms in other respects to the requirements of the Ballot Act, 1872, is not void because it has not on the face of it the official mark directed by Section 2 to be marked on both sides of the ballot paper.

It is sometimes important to ascertain whether the acts of a Returning Officer are merely ministerial or judicial.

Section 2 of the English Ballot Act, 1872, provides, *inter alia*, that after the close of the poll the ballot boxes shall be sealed up so as to prevent the introduction of additional ballot papers and shall be taken charge of by the returning officer and that officer shall in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given and return their names to the clerk of the Crown in Chancery. The decision of the Returning Officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

The duties and position occupied by a returning officer under this section were considered by the House of Lords in *Pritchard v. Mayor of Bangor*, 13 A. C. 241. The Lord Chancellor, after citing section 2 of the Ballot Act, said that the function of the returning officer was to do, and only to do, what the statute prescribed; he was to count the votes, namely the written papers put into the ballot box, and according to their number, to declare which candidate had been elected. Only one judicial function was given to the returning officer with regard to the question of the validity of the voting papers, as papers, namely to see whether they complied with the Statute or whether there was any objection to them. That was the only judicial function which he possessed.

Lord Watson agreed that certain judicial duties were conferred on the returning officer by the section cited. He was to decide upon the validity of the ballot papers and his decision remained final if not challenged and reversed in an Election Court. But his duties were purely ministerial as regarded the taking of their votes from the electors and reporting the result of them. He was to count the votes and when he had done so and had ascertained the number given for each of the candidates he was to make a declaration of the number of the votes and of the persons who had received the greater number. Having done that, he was *functus officio*.

Lord Herschell agreed that the only judicial function of the returning officer was to exercise was "the decision as to any question arising in respect of any ballot paper." This was indicated by the provision that his decision on such a question was to be final, subject to reversal on a petition. He held that the returning officer had no functions beyond those defined by the Ballot Act and that he had no power to pronounce an opinion as to the qualification of a candidate. Looking at the balance of convenience it seemed to him that it would be inexpedient to give a returning officer such a power. The question of qualification or disqualification must frequently depend on nice points of law, and often upon difficult and disputed questions of fact. He held that a returning officer could not declare a person elected who had not received the majority of votes, because he had come to the conclusion that for some reason or other one of the candidates was disqualified.

In the result it was held that the returning officer had no jurisdiction to determine the question of disqualification of a candidate, and that the proper method for determining that question was by election petition.



Another case which deals with the position of a returning officer, and whether it is judicial or merely ministerial, is *Reg. v. Collins*, 2 Q. B. D. 30. That decision was given under a statute which defined the duties of the official who corresponded to the returning officer as follows: He was, on the day after the election, to ascertain the validity of the votes by an examination of the rate-books and other books and documents or witnesses as he might think necessary. This was held to be a judicial duty. But he was also to add up the votes and certify the result showing which candidate had been elected. This was held to be a ministerial duty.

The general rule was recognized, that what is done by an officer ministerially, may be questioned, but that if the officer acts judicially his decision is binding and conclusive unless an appeal is given.

Similarly by section 23 of the Thames Conservancy Act, 1894, "The returning officer shall, according to the best of his judgment and ability, make a true return in writing of the person or persons elected, and every person so returned shall be deemed to be duly elected" and it was held that, by the terms of that section, the returning officer, in making his return had acted judicially, and that the return was conclusive.

## SECTION 11.

### General Provisions Relating to Members.

These are set out in Part VI, which is common to the electoral rules for all the elected bodies, and may be summarized as follows:—

**Rule 24.** Every elected or nominated member is before taking his seat to make an oath or affirmation of his allegiance to the Crown, to the effect that he will bear true allegiance to His Majesty, the King-Emperor of India, . . . . . and that he will faithfully discharge the duty upon which he is about to enter.

**Rule 25.** If a person who has been nominated or elected subsequently becomes subject to any of the disabilities set out in Rule 5 or Rule 20, or fails to make the oath or affirmation prescribed by Rule 22, within such time as the Governor-General considers reasonable, the Governor-General is to declare the seat vacant, if the disqualification has not been removed under the rules. When a seat is so declared vacant, the constituency will be called upon to elect or nominate another person.

**Rule 26.** When the vacancy occurs in the case of an elected member by reason of his election being declared void or of absence from India, inability to attend duty, death, acceptance of office or resignation duly accepted the Governor-General or Governor will call upon the constituency concerned to elect a person to fill the vacancy within a defined time.

If a vacancy occurs in the case of a nominated member, the Governor-General or Governor will nominate to the vacancy a person having the necessary qualification under the Rules.

**Rule 27.** When the term of the elected body expires or it is dissolved, a general election will be held so that the new body may be constituted ; and for that purpose the Governor-General or the Governors of Provinces will call upon the

several constituencies to duly elect members within a defined time, and they will make the necessary nominations to complete the body.

Rule 28. The names of members so elected will as soon as possible be gazetted.

Rule 29. If any difficulty arises as to the preparation or publication of any electoral roll, or as to holding any elections the Governor-General or the local governments may by order do anything not inconsistent with the Rules which appear to be necessary.

## SECTION 12.

### **The Final Decision of Doubts and Disputes as to the Validity of an Election.**

This subject is dealt with in Part VII and in Schedule V. of the Electoral Rules; and in Part II of Act XXXIX of 1920, entitled "The Indian Elections and Enquiries Act, 1920."

Rule 30. Some special definitions are here given for the purposes of Part VII and Schedule V of the Electoral Rules.

"Agent" includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with an election with the knowledge or consent of the candidate.

"Candidate" means a person who has been nominated as a candidate at any election or who claims that he has been so nominated, or that his nomination has been improperly refused and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election.

"Electoral right" means the right of a person to stand or not to stand as, or to withdraw from being a candidate, or to vote or refrain from voting at an election; and "returned candidate" means a candidate whose name has been published under the electoral rules as duly elected.

It will be seen that the definition of a "candidate" in this Part, that is, for the purposes of election petitions is wider than that given by the new Section 171A of the Penal Code (which deals with the offences of bribery, undue influence and personation), in that the present definition includes a person who claims that he has been nominated, or that his nomination has been improperly refused.

Rule 31. No election is to be called in question except by an election petition presented in accordance with the provisions of Part VII r.r. 30 *et seq.* of the Electoral Rules.

Rule 32. An election petition may be presented to the Governor-General or Governor by any candidate or elector

within 14 days from the date on which the return and declaration of the election expenses of the returned candidate have been received by the Returning Officer ; or within 30 days from that date by an officer empowered by the Governor-General in Council or the Local Government in that behalf on the ground that the election was not a free one by reason or the large number of cases in which undue influence or bribery has been exercised or committed ; or on the ground that the returned candidate or his election agent or any other person acting with the connivance of the candidate or of his election agent has been guilty of the offence of bribery, undue influence or personation as defined in Chapter IX A of the Penal Code in respect of the election, by any candidate or elector within 14 days of the date on which the returned candidate, election agent, or other person is convicted of such offence.

An election petition is to be deemed to have been presented to the Governor-General or Governor when it is delivered to him or to any officer appointed to receive it, either by the person making it or by a person authorised in writing by the person making it ; or by registered post ;

and when the last day for presenting a petition is a public holiday, it may be presented on the next succeeding day which is not a holiday.

**Rule 33.** The petition is to contain a statement in concise form of the material facts on which the petitioner relies, and is to be accompanied by a list signed and verified setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of its commission.

The Commissioners may allow the list to be amended or may order further or better particulars, on such terms as to costs as they may direct.

**Rule 34.** In addition to questioning the election of the returned candidate the petitioner may claim a declaration

that he himself or any other candidate has been duly elected, in which case he must join as respondents, all other candidates who were nominated at the election.

Rule 35. The petitioner must deposit the sum of Rs. 1,000 in cash or Government promissory notes of that value at the then market rate, as security for costs, otherwise the petition will be dismissed. No deposit is, however, necessary, if the petition is presented by an officer empowered in that behalf.

Rule 36. If all these provisions (as to date of presentation, particulars, or deposit) are not complied with, the Governor-General or Governor will dismiss the petition. But if the petition is not dismissed the Governor-General or Governor will appoint those persons as Commissioners, who are, or have been, or are eligible to be appointed Judges of a High Court under the Government of India Act, and will appoint one of them as President, and applications and proceedings will then be dealt with by the Commissioners. If the services of any Commissioner are not available or if during the course of it any Commissioner is unable to continue to attend it, another will be appointed. A President of the Commission may be appointed even before the Commissioners and references may be made to him as to matters which may have to be done before the commencement of the enquiry.

The President will as soon as possible cause a copy of the petition, to be served on each respondent, and to be published in the *Gazette* and may call on the petitioner to execute a bond in such amount and with such securities, as he may require for the payment of any further costs. This will not be required when the petition has been presented by an officer empowered in that behalf. At any time within 14 days of the publication of the petition in the *Gazette* any other candidate is to be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond.

If more petitions than one are presented the Governor-General will refer them all to the same Commissioners, who may, at their discretion, enquire into them either in one or in more proceedings as they think fit.

Rule 37. The enquiry is to be conducted as nearly as possible in conformity with the procedure in the Civil Procedure Code applicable to civil suits, and subject to the provisions of the Electoral Rules.

As regards evidence, the Commissioners need only make a memorandum of its substance.

Rule 38. The Governor-General or Governor appoints the place at which the enquiry is to be held, but the Commissioners may, in their discretion, sit for any part of the enquiry at any other place in the province in which the constituency in question is situated. They may also depute any one of their number to take evidence at any place in that province.

Rule 39. An election petition may be withdrawn only with the leave of the Commissioners; and the consent of the petitioners must be given to a withdrawal if there are more petitioners than one in the application. If it is desired to withdraw a petition before any commission has been appointed leave must be given by the Governor-General or Governor. If an application for a withdrawal is made to the Commissioners notice of it is to be given to all other parties to the petition and is to be published in the *Gazette*, and the notice is to fix a date for the hearing of the application.

An application to withdraw a petition will not be granted if the Governor-General or the Governor or the Commissioners are of the opinion that it has been induced by any bargain or consideration which they consider ought not to be allowed.

If an application is made to the Commissioners to withdraw a petition and is granted the petitioner is to be ordered

to pay the respondent's costs theretofore incurred or such portion thereof as the Commissioners may think fit; the notice of withdrawal is to be published in the *Gazette* by the Governor-General or Governor or by the Commissioners, and any person who might, himself, have been a petitioner, may, within 14 days of such publication, apply to be substituted as a petitioner in place of the party withdrawing and on depositing the security will be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

Rule 40. An election petition abates only on the death of a sole petitioner or of the survivor of several petitioners; but if the sole petitioner was an officer empowered to present the petition the proceedings may be carried on by any other officer similarly empowered.

Notice of the abatement of a petition is to be published in the *Gazette*, by the Commissioners, or if it abates before Commissioners are appointed, by the Governor-General or Governor; and any person who might have been a petitioner may within 14 days apply to be substituted as a petitioner, on giving security and may then continue the proceedings as the Commissioners may think fit.

Rule 41. If before the trial of the petition is concluded a respondent dies or gives notice that he does not intend to oppose the petition the Commissioners will publish notice of that fact in the *Gazette*. In that case also, any person who might have been a petitioner, may, within 14 days of such publication, apply to be substituted for the respondent and oppose the petition as the Commissioners may think fit.

Rule 42. At the enquiry, if a candidate other than a returned candidate claims the seat for himself the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented against his election. But this evidence can only be given if notice has been given to the Commissioners within 14 days



from the publication of the petition and if the deposit is made and a bond executed. The notice is to be accompanied by the statement and list of particulars required for an election petition, and must be signed and verified in the same way.

Rule 43. The Commissioners may require the Advocate-General or some one instructed by him to attend and take part in the proceedings as they may direct.

Rule 44. If in the opinion of the Commissioners the election of a returned candidate has been procured or induced or the result of the election has been materially affected by a corrupt practice; or any corrupt practice specified in Part I of Schedule V of the Electoral Rules has been committed or the result of the election has been materially affected by the improper acceptance or refusal of any nomination or by the improper reception or refusal of a vote or the reception of any vote which is void, or by any non-compliance with the provisions of the Government of India Act or the Rules or Regulations made under it (which will include the Electoral Rules) or by any mistake in the use of any form annexed thereto, the election of the returned candidate is to be void.

Similarly, if in the opinion of the Commissioners the election has not been a free election by reason of the large number of cases in which undue influence or bribery within the meaning either of Part I or Part II of Schedule V to the Electoral Rules, has been exercised or committed, the election is to be void.

On the other hand, the Commissioners may find that an election is not void if they report that a corrupt practice specified only in Part I of Schedule V has been committed by an agent, such corrupt practice not amounting to any form of "bribery" other than "treating," as explained in the Electoral Rules, or to the procuring or abatement of personation.

But to enable the Commissioners to give a finding that the election is not void, they must report that they are satisfied that no corrupt practice was committed at the election by

the candidate himself or by his election agent; and that the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of the candidate or his election agent; and that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and that the practices mentioned in the report were of a trivial, unimportant and limited character; and that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents.

The expression “treating” for the purposes of this report is given the following definition:—The incurring in whole or in part, by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.

Rule 45. At the conclusion of the Enquiry the Commissioners are to report whether the returned candidate or any other party to the petition who has claimed the seat has been duly elected. Their finding is to be given with due regard to the questions whether the election is void or not void, for the reasons and considerations set forth in the foregoing Rule 44.

The report is to include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom they should be paid. This recommendation may include a recommendation for the payment of the costs of the Advocate-General or a person attending under his instructions.

The report of the Commissioners is to be in writing signed by all the Commissioners and is to be forwarded by them to the Governor-General or Governor who will issue orders in accordance with the report and publish it in the *Gazette* and those orders will be final.

Rule 46. In case of a difference of opinion among the Commissioners either in their report or in any other matter, the opinion of the majority is to prevail and the report is to be expressed in the terms of the views of the majority.

Rule 47. When a charge of any corrupt practice is made in an election petition the Commissioners are to record in their report a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of such corrupt practice.

The Commissioners in their report are also to record the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice, and the nature of such corrupt practice, with any such recommendations as they may desire to make for the exemption of any such persons from any disqualifications they may have incurred in that connection under the Electoral Rules. But this is subject to the proviso that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

*Interpretation of Electoral Rules.*

This subject is dealt with in Part VIII of the Rules.

Rule 48. If any question arises as to the interpretation of the Electoral Rules, otherwise than in connection with an election enquiry held under them, the question is to be referred to the Governor-General and his decision is to be final.

This means, of course, that an Election Court is competent to put its own interpretation on the Rules.

Part II of Act XXXIX of 1920 relates to "Election enquiries and other matters," and the word "election" as there used refers to elections to both Chambers of the Indian Legislature and to a Legislative Council constituted under the Government of India Act.

It defines the powers of Commissioners appointed to hold enquiries, which are to be similar to those vested in a Court under the Code of Civil Procedure in respect of discovery and inspection, enforcing the attendance of witnesses and requiring the deposit of their expenses, compelling the production of documents,

examining witnesses on oath, granting adjournments, reception of evidence taken on affidavit and issuing commissions. Commissioners may also summon and examine *suo motu* any person whose evidence appears to them to be material. The jurisdiction of Commissioners to enforce the attendance of witnesses is, however, confined to the Province in which the election was held. The provisions of the Indian Evidence Act are to apply to such enquiries and no document is to be inadmissible in evidence on the ground that it is not duly stamped or registered. Witnesses are not to be required to state for whom they have voted at an election but are bound to answer any other relevant question even if such answers incriminate them but are entitled to receive certificates of indemnity against prosecution if such answers have been given truly. Such certificates, however, are not to relieve from election disqualifications. Parties may appear before Commissioners either in person or by pleader unless the Commissioners require them to appear in person. The reasonable expenses of witnesses may be allowed by the Commissioners, who also have full power and discretion to determine by and to whom and to what extent costs are to be paid and may allow interest on such costs, and may determine the fee payable by a party to his advisory pleader; an order for the payment of costs may be executed in the appropriate Civil Courts.

## SECTION 13.

### The Election Petition.

#### *Forms : Practice and Commentaries.*

An election petition may be presented by (1) any candidate or (2) elector. The term "candidate" is defined as "a person who has been nominated as a candidate", so that he is none the less a "candidate" even if his nomination was erroneous or unsupportable because he was not really qualified for nomination. If he has in fact been nominated even wrongfully he becomes a "candidate" and may petition.

A ruling was given to this effect in *Harford v. Lynskey*: (1899) 1 Q. B. 852 and the definition in the Indian Electoral Rules (*supra*) seems to show that this position is accepted in India.

The term "elector" is not defined in the rules nor does the term "voter" (which is used in England) seem to be defined in England. Rule 10, however, entitles every person on the electoral roll for the time being in force to vote.

It must be presumed, therefore, that, *prima facie*, an elector whose name appears as such in the Electoral Roll is entitled to present a petition.

When a petition has once been presented it may not be withdrawn without the leave of the Commissioners so that, if it is once presented, even by a person who was not in fact qualified to present it, the Commissioners, presumably, may keep it on their file and hear and determine it.

But, if the withdrawal is allowed, the petitioner will be ordered to pay the respondent costs.

Rule 33, which deals with the presentation of a petition, deals with its form rather than with the substantive grounds on which it may be based.

Thus, it is to contain a concise statement of the material facts on which the petitioner relies together with a list giving particulars of any 'corrupt practice which he alleges.'

Though this suggests that the Rule only contemplates a petition being founded on a corrupt practice, the rule is not exhaustive and there is no express limitation to that effect and there appears to be no prohibition against a petition being founded on other grounds.

This view is borne out by Rules 31 and 32 by virtue of which an election can be called in question by petition; and the petition may be presented by a candidate or elector:—a perfectly general provision, which in no way confines the petition to the grounds of corrupt practices.

The petition which a public officer is empowered to present does, however, seem to be confined to such practices.

The result seems to be that, at any rate in the case of petitions by candidates or electors, any ground may be put forward to show that substantial justice has not been done in the election. For example if the regulations in force in a Province for the purpose of elections should not be followed, as directed by Rule 15, the result might be that a so-called election could not strictly be accepted as an election at all, as expressing the will of the entire electorate.

It would be impossible to enumerate the various circumstances that might exist and which might singly or collectively render an election abortive as expressing the will of the entire electorate.

The Regulations might not have been followed in regard to nominations and scrutiny of nominations, or for the checking of voters by reference to the electoral roll, or for the voting by illiterate voters, who are probably the most numerous class of voters in country districts or for the scrutiny of votes if one has been held:

Or, floods in a particular locality might have prevented electors from having access to the polling stations, or processions or riots for which the candidate was not responsible might have intimidated whole classes or communities from voting or polling booths might not have been opened.

A miscount is another ground on which a petition can clearly be founded because it means that the successful candidate has not, in fact, been returned.

It is inconceivable that a petition could not be presented to question the election of a candidate returned in such circumstances. In *Woodward v. Sarsons*: L.R.10, C.P.733, decided in 1875, it was laid down that an election is to be declared void by the common law of England applicable to parliamentary elections if it has been so conducted that the tribunal which is asked to avoid it is satisfied, as a matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws,—i.e., that the constituency has not in fact, had a fair and free opportunity of electing the candidate which the majority might prefer, or that there is reasonable ground to believe that a majority of the electors may, by reason of irregularities in the mode of conducting the election, have been prevented from electing the candidate they preferred.

Lord Coleridge, C.J., considered that there would be no real election if, for instance, a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of machinery necessary for voting as by polling stations being demolished or not opened or by other of the means of voting according to law not being supplied or supplied with such errors as to render voting by means of them void, or by fraudulent counting of votes, or false declaration of members by a returning officer or by such other acts or mishaps.

The Lord Chief Justice added that the same results would follow if the tribunal trying an election petition should be satisfied that there was reasonable ground to believe that a majority of the electors "may have been" prevented from electing the candidate they preferred. Otherwise the tribunal ought not to declare the election void.

The same case shows that an election must be conducted in the manner laid down by the laws which govern elections. For instance, an entire section of a constituency might conceivably agree among themselves, by meeting or show of hands, or circular letters, to elect a particular candidate in place of an election by ballot. This would not be an election even though the choice of the candidate really represented the will of the constituency. It is conceived that it would not be necessary to allege or establish that a "majority of the electors," in the entire electorate had been deprived of their vote. A candidate might have been returned with a small majority, and in that case, a local obstacle to voting might have deprived electors from voting to an extent sufficient to make the majority doubtful.

It was, however, held, in the same case that to render an election void under the English Ballot Act, 1872, by reason of non-observance of, or non-compliance with the rules or forms given therein, such non-observance or non-compliance must be so great as to satisfy the tribunal before which the validity of the election is contested, that the election has been conducted in a manner contrary to the principle of an election by ballot, and that the irregularity complained of did effect or might have affected the results of the election.

In an old case decided with reference to the common law the court refused to upset an election merely because the polling booths had been opened an hour too late and closed an hour too soon, where it was not shown that the result of the election had been affected. In another similar case a petition was allowed on its being shown that the returning officer had returned the wrong candidate because a mob had compelled him to do so. Intimidation sufficient to frighten a candidate to withdraw was another ground on which a petition was allowed.

In a case decided in 1869, after the Parliamentary Elections Act, 1868, an election was set aside on its being shown that two polling stations were not opened.

Where a candidate has been returned by a substantial majority the court does not upset the election on grounds which can only affect a few votes. As in a case where the majority was nearly 450 and the irregularities included not allowing 2 clear week days to elapse between nomination and poll, (one day being a Sunday), and nearly 200 counterfoils had not been detached by the returning officer

But where three candidates had been nominated and one withdrew but the returning officer allowed his name to be printed on the ballot papers and 34 electors voted for him and the successful candidate only had a majority of 3 votes, the election was upset. *Wilson v. Ingham*: 64 L. J. Q. B. 775. (The election was to an urban district council but the principle applies to all elections.)

The form of an election petition is given in outline in Rule 33, which provides that it is to contain a statement in concise form of the material facts on which the petitioner relies.

Under the English Parliamentary Election Petition Rules made pursuant to the Parliamentary Election Act, 1868, an election petition is to contain the following statements:—(1) It is to state the right of the petitioner to petition and

2) it is to state the holding and result of the election and briefly state the facts and grounds relied on to sustain the prayer.

The petition is to be divided into paragraphs each of which (as nearly as may be) is to be confined to a distinct portion of the subject, and every paragraph is to be numbered consecutively and no costs are to be allowed of drawing or copying any petition not substantially in compliance with this rule unless otherwise ordered by the court or a judge.

The petition is to conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected or that the election should be declared void, or that a return may be enforced (as the case may be) and is to be signed by all the petitioners.

A form is given, but any petition drawn to the like effect is to be sufficient:—

### FORM OF PETITION.

#### IN THE COMMON PLEAS.

#### *The Parliamentary Elections Act, 1868.*

Election for (state the place) holden on the                      day of                      A. D.  
The petition of A. of (or A. and B.) whose name is subscribed.

1. Your petitioner A. is a person who voted (or had a right to vote) at the above election (or claims to have had a right to be returned at the above election, or was a candidate at the above election); and your petitioner B. (state his right also).

2. And your petitioners state that the election was holden on the                      day of                      A. D. when X. Y. and Z. were candidates and the Returning Officer has returned X. and Y. as being duly elected.

3. And your petitioners say that (here state the facts and grounds on which the petitioners rely).

Wherefore your petitioners pray that it may be determined that the said X. was not duly elected or returned and that the election was void (or that Z. was duly elected or returned and ought to have been returned or as the case may be).

Signed. A.

„ B.

Various questions arise in different cases as to the persons who should be made parties to an election petition.

The decision in *Lane v. Warren*, 14 Q. B. D. 548, was under the English Municipal Corporations Act, 1882, but the principle decided can be applied to any election petition. It was there held that an election petition may be presented against some only of the persons returned at a Municipal election although the ground of the petition is one affecting the validity of the election as a whole, and the court can, on such a petition declare the persons so petitioned against, not



to have been elected. Brett, M.R., said that a petition against all the candidates returned would have been valid; but those who had petitioned in the case had petitioned against the return of only three candidates, and he held that they were entitled to do so. By way of illustration he put a case in which, say, four candidates had all been guilty of bribery, and that a petition was presented against only three of them. It could not be tolerated that those three should be allowed to contend that although they were admittedly guilty of bribery their return could not be questioned because there was a fourth candidate who was equally guilty of bribery, but whose election had not been questioned. Cotton, L.J., agreed that the court ought not to abstain from holding that three candidates were not duly elected, merely because there was a fourth person whose election was open to the same objection but could not be questioned because the time for filing a petition had elapsed.

In *Monkswell v. Thompson* (1898) 1 Q.B. 479 there were eight candidates for five seats. The five highest on the poll were declared elected; the respondent being the fifth. The candidate who was sixth on the poll, presented a petition against the election of the respondent, on the ground that certain votes given for the petitioner had been wrongly counted for the respondent or for some other candidate, and the petitioner claimed the seat. A recount was had of the votes given for the respondent and that for the petitioner with the result that the petitioner was found to have a majority over the respondent. The votes of the other candidates were not recounted. It was held that the petitioner was entitled to the seat. The court laid down that it was enough for him to establish that he had received more votes than the respondent, and that it was unnecessary for him to have a recount of the votes given for the first four candidates.

The case arose at an election of members of a School Board under the Municipal Corporations Act, 1882; but the principle laid down is of general application, as it was really a decision under the Ballot Act, 1872.

The argument for the respondent (whose seat was forfeited as the result of the recount) was in effect that the recount should have been general and not only as between the petitioner and the respondent, because even though the petitioner was found to have the greater number of votes on the recount and as between those two, the respondent might have been found to have a greater number than one of the first four, if the recount had been a general one.

Hawkins and Channell, JJ., were against this contention, and declared the petitioner elected. The decision was largely influenced by the fact that the election of the first four had been left unchallenged and the twenty-one days during which objections might have been lodged had been allowed to pass. Their elections had therefore become final. Hawkins, J., conceded that if the election of the first four had been challenged the court might have had some difficulty in saying what course ought to have been pursued.

Where an officer has merely done his duty in deciding whether an objection to a nomination paper is valid or not and no charge is laid against him of any want of *bona fides*, he ought not be made a respondent in an election petition.

A petitioner Harmon was properly nominated without any mistake being made in the spelling of his name. But he was entered on the Burgess Roll as "Harmond." His opponent lodged an objection to the validity of his nomination and the Mayor, whose duty it was to rule on the objection, upheld it and declared the only other candidate.

In the election petition filed by Harmon, he made the Mayor respondent. The only ground for doing so would be a "complaint of the conduct" of the Mayor; but no complaint was made against him except that his ruling was alleged to be erroneous. It was held that this was not a "complaint of the conduct" and that the Mayor had been wrongly joined.

Lord Selborne, sitting in the Court of Appeal, held that the phrase "complaint of the conduct" must be taken to mean that there must be an imputation of misconduct, and he expressed an opinion regarding some general principles relating to the acts of returning officers. He doubted whether any act on the part of a returning officer which did not fall within the list of offences enumerated in section 11 of the Ballot Act could be treated as misconduct so as to render him liable to be made a respondent in a Municipal election petition. But whether that were so or not it was perfectly clear that an erroneous decision upon the validity of a nomination paper by a Mayor, whether he were a returning officer or not, was not misconduct, and that a complaint of such decision was not a complaint of misconduct. He could hardly conceive anything more vexatious or unreasonable than to make a man a respondent when the propriety of his conduct was not impeached.

Brett, L.J., added that the only persons who can be made respondents in a Municipal election petition are the candidates, or the returning officer, in a case in which a complaint is made of his conduct. He pointed out that every person who presided at any part of an election was not necessarily a returning officer. If he were, then every one who presided at a polling booth would be a returning officer, which was manifestly absurd. *Harmon v. Park* 6 Q. B. D. 323.

Where a petition has been lodged, claiming a seat, the decision of which involved not only the question whether the member who had been returned had been duly elected but whether the person for whom the seat was claimed was duly elected, the decision is final and cannot be reopened. *Waygood v. James*, L.R. 4 C.P. 361. In that case, three candidates had stood for the election, Cox, Barclay and James, there being only 2 seats. The returning officer returned Cox and Barclay as duly elected, and a petition was then presented by 2 voters against the return of Cox and claiming the seat for James. Before the trial, Cox gave notice to the petitioners that he intended to object to James' return on the ground of bribery and treating: and at the trial he cross-examined the petitioners' witnesses with a view to prove bribery and treating by James' agents and argued that bribery had been proved, though he called no witnesses himself. The Judge in deciding the petition held that Cox, one of the returned candidates, had been guilty of bribery by his agents and that James had not been guilty of bribery or treating and after a scrutiny he further decided that James had been duly elected.

Two other voters subsequently presented a second petition against the return of James, alleging that he had been guilty of bribery and treating by himself and his agents.

Willes, J., said there was no precedent for a second enquiry into the conduct of a member whose conduct had already been inquired into on a previous petition. Bovill, C.J., said it was true that the candidate was no party to the petition (meaning, apparently, the first petition) but that was well known to the legislature.... The enquiry was one not as between party and party but one affecting the rights of the electors and the House of Commons.... and this inquiry was to take place before an election Judge, who was to inquire into and decide the questions raised for his determination. One of these issues, undoubtedly, must be on such a petition as that, whether, the candidate for whom the seat was claimed, was or was not duly elected at the election. That was an issue distinctly raised and the parties could go into it if they pleased, or might abstain from going into it. The opportunity was therefore afforded of having the question discussed and absolutely and finally determined by the election Judge. He considered that the matter had become *res judicata*. No appeal was possible because section 11 of 31 and 32 Vict. c. 125 provided that there was to be a final determination at the trial of the question who has been elected. The second petition was struck off the file.

In *Yates v. Leach* : L. R. 9 C.P. 605, it was held that the term "respondent" in an election petition includes a person who claims to have been elected and acts as if he had been elected ; and is not confined to a person who has been duly elected. The decision was under a section which defined the term "respondent" and referred to him as "a person against whose election" a petition had been presented. It was argued, but without success, that a petition could only be presented against a person who had been really and duly elected.

The particulars of bribery and treating which a petitioner can be ordered to give are only "so far as known." In *Maude v. Lowley* : L.R. 9 C.P. 16, a Judge in chambers made an order under the Corrupt Practices (Municipal Elections) Act, 1872, for the delivery of particulars by the Petitioners to the Respondent "of all persons alleged to have been bribed and treated, by whom, when and where ; of all persons alleged to have been retained and employed as canvassers, by whom, when and where ; and of all persons to whom money was paid or agreed to be paid, on account of conveyance of voters to the poll, and by whom, when and where such moneys were paid or agreed to be paid." Lord Coleridge, C.J., said that the only authority for ordering particulars of the time and place, was with respect to acts of "treating" and even that order appeared to have been qualified by the words "so far as known." Counsel argued that there was no difference between acts of "treating" and "bribing ;" but Keating, J., stated that "treating" in the nature of things, generally takes place in public-houses, and more in public ; but "bribing" is effected in holes and corners. It was conceivable that the petitioners might have evidence that parties were "bribed," and yet were not able to specify by whom they were bribed, and when and where. The court varied the order by adding the words "so far as known."

In the case of *Lovering v. Dawson*: L.R. 10 C.P. 711, it was decided that an unsuccessful candidate ought not to be joined as a respondent in an election petition against two elected candidates. Three candidates A., B. and C. coalesced for the purpose of canvassing the burgesses in a Municipal election, of whom A. and B. were elected and C. was not. A petition was presented against the return of A. and B. and C. was also joined as a respondent. Objection was taken on behalf of C. at the trial but he was kept on as a respondent and in the result it was found that A. had been guilty of personal bribery and B. and C. of bribery through agents. A special case was then stated on which it was held that C. was not properly made a respondent. It was contended that under the definition section a candidate included a person who had been nominated or had declared himself a candidate for election; and that by another section when the election court found and reported that a corrupt practice had been committed by or with the consent of a "candidate" at an election, such candidate should be deemed to have been personally guilty of corrupt practices at the election. Certain disabilities were then enacted. It was argued that the effect was that the disabilities attached to an unsuccessful candidate, and that therefore he might be made a respondent in a petition; and that it would be unjust that a man might be subjected to penalties and disqualifications without having had an opportunity to defend himself.

Lord Coleridge, C.J., said that if C. the defeated candidate had come forward to claim a seat, or if he had insisted on making himself a respondent he might have been held to have taken upon himself all the liabilities which attach to a respondent. But it by no means followed that the converse of the proposition was true and that without any act or consent on his part and against his will, a man could be made a respondent so that the petitioner might gain rights against him. . . . The term "respondent" included a person "against whose election" a petition was presented. The defeated candidate "C." was not a person against whose election the petition was presented. When a person was made a respondent it was in a petition complaining of the undue election of the person against whom the petition was presented. The defeated candidate "C." was therefore not properly joined.

By the English Municipal Corporations Act, 1882, Section 88, "an election petition may be presented . . . by a person alleging himself to have been a candidate at the election," and by Section 77 "candidate" means a person elected or having been nominated, or having declared himself a candidate for election." Two candidates were nominated though one of them was disqualified because he had a contract with the corporation. His nomination, objected to on this ground, was allowed but the only other candidate was declared elected. The disqualified candidate lodged a petition against the elected candidate and the question arose whether a candidate though disqualified for nomination and election was nevertheless a "candidate" so as to have the right to lodge an election petition. It was held that he was a "candidate" and could lodge a petition (*Harford v. Lynskey* 1899, 1 Q. B. 852).

The Court held that a person who was disqualified for election is also disqualified for nomination. On the definition of a candidate capable of lodging an

election petition, Wright, J., referred to the definitions given above and said :—  
 “The words” a person alleging himself to have been a candidate “cannot of course mean that a mere allegation without any colour of foundation in fact would suffice. Such a merely false allegation would be properly dealt with in a summary way. But the words used seemed designed to express something wider than absolutely valid candidature, and are at any rate consistent with the view that any person who was in fact a candidate may present and maintain a petition just as persons who voted in fact may do, whether or not they had a right to vote. Nor does there seem to be any sufficient reason why the words should be limited even to persons who have been in fact nominated in due form. It is quite possible that an intended nomination of a person may have fallen through or have been prevented in such a way that the election of another person may have been invalid (he gave instances) or if, as in *Howes v. Turner*, L.R. 1, C.P. D. 670, he issued a bad notice of election, and in any such case it can hardly have been intended to deprive the aggrieved person of the right to petition.” He distinguished the decision in *Monks v. Jackson*, L.R.1, C.P.D. 683, as the petitioner there had not been nominated in fact: and therefore was not qualified to petition. Here the petitioner was nominated in fact, his nomination form was in form regular, and he was therefore a candidate and qualified to maintain the petition; not for the purpose of claiming the seat, but for the purpose of shewing that there was no valid election.

Where 2 candidates stand for one vacancy and both are validly nominated, the election has to proceed, and if it subsequently appears that the successful candidate is disqualified from nomination and election, the candidate who polled fewer votes cannot claim to have been elected unless it is decided that the votes given to the successful candidate have been thrown away. But a “valid nomination” includes the case of a person who is disqualified in fact, but whose disqualification is not apparent on the nomination paper. (Per Kennedy, J., in *Hobbs v. Morey*: 1904, 1 K.B. 75.) Where the disqualification does not appear on the nomination paper and the election proceeds, and the disqualification is not known to the electors, then, the unsuccessful candidate cannot claim the seat unless on a scrutiny a sufficient number of the votes given for the candidate who has the majority can be struck off to give the unsuccessful candidate a majority, the votes of the successful candidate being disregarded.

In *Wilson v. Ingham*: 64 L. J. Q. B. 775, a clerk of a returning officer by mistake allowed the ballot-papers to contain the name of a candidate who had withdrawn. On a petition being lodged it was held that the election was void as to those candidates who had been elected by a majority of less than the number of votes given to the candidate who had withdrawn.

There were only 4 vacancies, but there were 5 candidates who had not withdrawn, and their names, together with the votes they polled, were as follows :—Scott, 243; Robson, 235; Ingham, 132; Hikeley, 129; and Wilson, 128. The sixth candidate, Meek, had withdrawn his name prior to polling day, but his name was allowed, by mistake, to remain on the ballot papers. He polled 34 votes. The Returning Officer declared the first four duly elected. The unsuccessful candidate, Wilson, presented the petition and claimed that Ingham and Hikeley

had not been duly elected by a majority of votes and that their election was void. The court held that the election of the two respondents was void, Wright, J., pointing out that the petitioner had polled only three votes less than one respondent and one less than the other respondent and that it was impossible to say that the result of the election was not affected by Meek's name being placed on the ballot-paper.

An election petition was presented in which definite charges were made of bribery, treating, undue influence, and other specific offences, against the respondent and his agents. A general charge was then made alleging the commission of "other corrupt and illegal practices before, during and after" the election. The petitioner was ordered to give particulars. Meanwhile, that is, after the petition had been filed, the respondent filed his return of election expenses and the petitioner, in his particulars, included some charges as being based on this return of election expenses. It was held that he was not entitled to do so. The language of the Act included charges "before, during and after the election," but the time limited for the filing of the petition was 21 days. The Lord Chancellor pointed out that the charges which were the subject of complaint when the petition was presented, and which were contained in the petition, could not include matters which had only happened after the petition had been presented. Lopes, L. J., said that the petition ought to show and did show offences which were then existent and the proper particulars which the petitioner was entitled to give were the particulars of the offences alleged in the petition. The argument for the petitioner would make the petition prophetic. A petition might include matters which happened after the election but particulars could not be given of matters which happened after the filing of the petition. (*Cremer v. Lowles* : 1896, 1 Q. B. 504).

## SECTION 14.

### Penal Code. Chapter IX A.

The Indian Election Offences and Inquiries Act, 1920, extends to the whole of British India.

Part I (as already stated) amends the Penal Code and Code of Criminal Procedure, and enacts a new chapter in the Penal Code, which is entitled "Chapter IX A."

Section 1. amends Section 21 of the Penal Code by adding the following clause:—" *Eleventh*: Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election."

And after *Explanation 2* of Section 21, the following is to be added as *Explanation 3*:—"The word 'election' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of election to which is by or under any law prescribed as by election." Then follow the addition to or amendments of the Penal Code.

### Chapter IX A.

#### *Of offences relating to Elections.*

Section 171 A. For the purposes of this Chapter:—

- (a) "Candidate" means a person who has been nominated as a candidate at any election and includes a person who when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election.
- (b) "Electoral right" means the right of a person to stand as, or to withdraw from being a candidate or to vote or refrain from voting at an election.

171 B. (I) Whoever—

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
- Bribery.

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery.

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171 C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

Undue influence at elections.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of sub-section (1).



(3) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171 D. Whoever at an election applies for a voting paper or votes in the name of any other person whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Personation at elections.

171 E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.

Punishment for Bribery.

Provided that bribery by treating shall be punished with fine only.

Treating.

*Explanation.*—‘Treating’ means that form of bribery where the gratification consists in food, drink, entertainment or provision.

171 F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Punishment for undue influence or personation at an election.

171 G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

False statement in connection with an election.

171 H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate shall be punished with fine which may extend to five hundred rupees.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171 I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

Section 3 amends Section 196 of the Code of Criminal Procedure, 1898, by inserting the words "or IX A" after the words "Chapter VI." The effect of the amendment is that no court is to take cognizance of (*inter alia*) any offence punishable under the new Chapter IX A of the Penal Code unless on complaint made by order of or under authority from the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in that behalf.

Section 3 also amends Schedule II to the Criminal Procedure Code by adding to it the offences relating to elections which are dealt with in the new Chapter IX A of the Penal Code.

## SECTION 15.

### Schedule V. Corrupt Practices.

Schedule V of the Electoral Rules is divided into two Parts, and lays down the acts which are to be deemed to be corrupt practices for the purposes of those Rules.

The verbatim Schedule V is as follows :—

The following shall be deemed to be corrupt practices for the purposes of these Rules.

#### PART I.

1. A gift, offer or promise by a candidate or his agent or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw from being, a candidate, or

(b) an elector to vote or refrain from voting at an election,

or as a reward to—

(a) a person for having so stood or not stood or for having withdrawn his candidature, or

(b) an elector for having voted or refrained from voting.

*Explanation.*—For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bonâ fide* incurred at or for the purposes of any election and duly entered in the return of election expenses prescribed by these (The Electoral) Rules.

2. Any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or any other person with the connivance of the candidate or his agent with the free exercise of any electoral right.

Undue influence.

*Explanation.*—(1) Without prejudice to the generality of the provisions of this clause, any such person as is referred to herein who—

- (a) threatens any candidate or voter or any person in whom a candidate or voter is interested with injury of any kind ; or
  - (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure,
- shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of this clause,

(2) a declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.

3. The procuring or abetting or attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person who has voted once at an election for a voting paper in his own name at the same election.

Personation.

4. The publication by a candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate or

Publication of false statements.

in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election.

5. The incurring or authorizing by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent in contravention of the provisions of any notification of the Governor-General in Council issued under Rule 20 of these Rules.

Authorization  
of Expenditure.

(Rule 20 of the Electoral Rules provides that the Governor-General may by notification in the *Gazette* (a) fix maximum scales of election expenses, which shall be applicable to any election held after the first election under the Electoral Rules; and (b) prescribe the numbers and description of persons who may be employed for payment in connection with any election held under the Electoral Rules.)

## PART II.

1. Any act specified in Part I, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

Acts under Part I.

2. The application by a person at an election for a voting paper in the name of another person, whether living or dead, or in a fictitious name, or for a voting paper in his own name after he has already voted at such election.

Personation.

3. The receipt of or agreement to receive, any gratification, whether as motive or a reward—

Bribery.

- (a) by a person to stand or not to stand as, or to withdraw from being a candidate, or
- (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw his candidature.

4. Any promise or promise of payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote.

Payment for conveyances.

5. The hiring, employment, borrowing or using for the purposes of the election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire.

Hiring and use of public conveyances.

Provided that any elector may hire any boat, vehicle or animal, or use any boat, vehicle or animal which is his own property, to convey himself to or from the place where the vote is recorded.

6. The incurring or authorization of expenses by any person other than a candidate or his election agent on account of holding any public meeting or upon any advertisement circular or publication or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, unless he is authorized in writing to do so by the candidate.

Incurring expense without authority.

7. The hiring, using or letting as a committee-room or for the purposes of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

Hiring of liquor shops.

8. The issuing of any circular, placard or poster having reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

Issue of circulars, &c., without printer's and publisher's name printed thereon.

## **SECTION 16.**

### **Corrupt Practices : Commentaries.**

By the division of Schedule V of the Electoral Rules into Part I and Part II, corrupt practices for which the candidate is directly or personally responsible are distinguished from those which have been done without his knowledge and consent and possibly in disobedience of his wishes or orders.

Thus, the bribery in Part I must have been effected by the candidate, or his agent or by any other person with the connivance of the candidate or the agent.

The undue influence, personation, publication of false statements, and authorization of expenditure dealt with in Part I must similarly have been effected on the direct personal responsibility of the candidate or his agent.

All these are made corrupt practices for the purposes of the Electoral Rules.

The acts referred to in Part II of Schedule V are also made corrupt practices, but they are acts committed by persons other than candidates or election agents, who are not acting in connivance with any candidate or agent.

Personation by anybody for his own independent objects or motives which may conceivably be hostile to a candidate is a corrupt practice on the part of the personator, and it is the personator alone who ought to be and can be penalized for his corrupt act. It would be unfair to a candidate to make him responsible for such an independent act of a voter.

Similarly, the bribery referred to in Part II is an act independent of any particular candidate and may well be committed without his knowledge. The offence consists of the receipt of a gratification by any one. The gratification need not be given by a candidate; and it may be given by a third party who is interested in inducing a new candidate to stand in competition with the prospective candidate or candidates. It would be clearly unfair to make any candidate responsible for such an act.

Payment for the conveyance of voters and the hiring of public conveyances are other acts which might easily be done without the knowledge or consent and even in disobedience of the orders of the candidate or his agent; and a candidate could not fairly be made responsible for such payment or hiring.

The other corrupt practices specified in Part II stand on the same footing and the same remarks apply to them: namely incurring expenses without authority, the hiring, using or letting of liquor shops as committee-rooms; and the issue of circulars and other printed matter without imprints.

The importance of this distinction between corrupt practices with which the candidate is personally concerned and those which may be committed by third parties without his knowledge, has been recognized in the Electoral Rules. For

example in Rule 44, which has been summarized above, one of the grounds upon which the election of the returned candidate is to be declared void is the proof that the election has been materially affected by any corrupt practice specified in Part I of Schedule V having been committed. This is a reason personal to the candidate.

In contradistinction to this is the latter part of the same Rule which provides that the election is to be void if it has not been a free election because of the large number of cases in which undue influence or bribery has been exercised or committed, within the meaning of Part I or Part II of Schedule V. A portion of the corrupt practices proved may not have been committed personally by or with the connivance of the candidate or his agent, but the number of corrupt practices of all kinds has been so great that the election was not a free one. This is another way of saying that the will of the electorate has not been reliably expressed by the poll, owing to the commission of numerous corrupt practices, whether the returned candidate was responsible for them or not.

The distinction between the corrupt practices in Part I and Part II of Schedule V is again emphasised in Rule 44 which enables the Commissioners to find that the election is not void if they report that a corrupt practice specified only in Part I of Schedule V has been committed by some one who is not an agent of the candidate, which does not amount to bribery except in its limited form of "treating." In other words, a candidate need not be unseated if the only offence proved in the enquiry is that some one else who was not his agent gave food, drink, entertainment or provision to voters, with the object, directly or indirectly, of inducing them to vote or refrain from voting, or as a reward for having voted or refrained from voting.

The absence of intention to induce or to reward for a vote, must be found by the Commissioners in their report if they wish to report that the election is not void.

For the purposes of the Report on the Election Petition therefore, "treating," if it is to be harmless, must be done innocently; that is to say, it must not have been done with the object of inducing a voter to do anything connected with the exercise of his electoral right. So it must be taken that "treating" is harmless unless done with that intent. In other words the corrupt object of the "treating" is the gist of it if it is to be regarded as a corrupt practice.

The result is the same in the definition of "treating" in the new Chapter IX A of the Penal Code because "treating" is there defined as a "form of bribery", and the gist of "bribery" is the object of inducing the exercise of an electoral right.

The Electoral Rules therefore conform with the Penal Code: and the object to induce must exist and be proved before a corrupt practice or an offence is established.

A mere "offer" or "promise" of a gratification is sufficient to constitute "bribery" for the purposes of Schedule V and the proof of a "corrupt practice" and the lesser offence of "treating" provided that it is done with the object mentioned.



Rule I of Part I of Schedule V provides (*inter alia*) that an "offer or promise" . . . . . "with the object of inducing", etc., is a corrupt practice. The "object" referred to in the definition is that of the person who promises and not of the promisee, so that it must be taken that the state of mind of the promisee is immaterial when the position of the promiser is being considered. It is immaterial whether he has accepted the offer or promise or refused it.

Similarly, under the new Chapter IX A of the Penal Code, "a person who offers . . . . . a gratification shall be deemed to give a gratification," and as the gift of a gratification constitutes "bribery," the offer of a gratification constitutes the same offence. The offence is complete therefore when the offer is made, and the state of mind of the promisee is immaterial when the position of the promiser is under consideration.

A person who receives a gratification as motive or reward for what may be briefly referred to as exercising his electoral right is also guilty of a corrupt practice, under Schedule V of the Electoral Rules.

A person who commits the offence of bribery is rendered liable to be mentioned by the Commissioners in a report on an Election Petition as a person who has been proved to have been guilty of a corrupt practice. (See R. 47 of Part VII.)

Persons who have been reported guilty of the corrupt practice of bribery, undue influence or personation are not eligible for election to the Council of State or to any of the elected bodies for a period of five years from the date of the Report unless they are relieved from the disability by an order of the Governor-General in Council or a local Government.

A person who gives or accepts a gratification for exercising an electoral right also commits an offence under the new Chapter IX A of the Penal Code; and a conviction under that code places him under similar disabilities which may be relieved against in the same manner.

For the purposes of the criminal law, a guilty intention must in the ordinary course be proved. This is evident from the definitions of "bribery," "undue influence" and "personation" which offences have been introduced into the Penal Code by the new Chapter IX A. Even the further offences of making false statements, making illegal payments and failure to keep election accounts as defined in that Chapter involve an intention to deliberately do something which is forbidden by law.

With the exception at any rate of the three offences last mentioned, every offence enumerated in Chapter IX A on the face of it involves the committal of some act which the conscience of any man would tell him was wrong. The intention, when committing it, must have been corrupt.

Schedule V, however, has a wider scope, and deals not only with acts which are morally wrong such as bribery, undue influence, personation and publication of false statements, but also with other acts which are to be "deemed to be corrupt practices for the purposes of these Rules"—namely, the Electoral Rules.

Among the other corrupt practices set out in Schedule V are:—Payment or conveyances, the hiring and use of public conveyances and the hiring of liquor shops as committee-rooms. These are practices which are made corrupt by the Rules though in themselves they are harmless every-day acts. They are merely practices forbidden by Statute as compared with practices which are in themselves morally wrong.

A perusal of the English Statutes and the cases decided in England, however, makes it clear that it is necessary to make restrictions on expenditure of all kinds in connection with elections to public bodies; and the result is that a number of practices which are in themselves morally innocent, are labelled “corrupt” and prohibited.

The English Corrupt Practices Prevention Act of 1883 contains the following provisions relating to treating:—

Whereas under (the Act of 1854) persons other than candidates at parliamentary elections are not liable to any punishment for treating and it is expedient to make them liable:—

Section 1. Any person who corruptly by himself or by any other person either before, during or after an election directly or indirectly gives or provides or pays wholly or in part the expense of giving or providing any meat, drink, entertainment or provision to or for any person, for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election shall be guilty of treating; and every elector who corruptly accepts or takes any such meat, drink, entertainment or provision shall also be guilty of treating.

The English Act of 1883 also defines “undue influence” which includes threats of force or violence or temporal or spiritual injury to induce a person from voting or from refraining from voting or on account of his having voted or refrained from voting at an election, or abduction, duress or any fraudulent device to impede the free exercise of the franchise.

The expression “corrupt practice” as used in the Act means treating, undue influence, bribery or personation and abetting personation.

Section. 4 of the Act renders an election void if any corrupt practice is proved other than treating or undue influence. With regard to these offences the section does not render the election void if the treating or undue influence has been the work of persons other than the candidate; but if the candidate himself has been guilty of treating and undue influence the election is void.

The Act of 1883 was amended by that of 1895, which provides that the making of false statements as to the personal character or conduct of a candidate before or during a parliamentary election is an illegal practice; but a person is not to be liable if he had reasonable grounds for believing the statements to be true.

Section 4 of the Act of 1895 defines the position of a candidate with reference to the acts of his election agent. The candidate is not to be liable for any illegal practice committed by his agent other than his election agent, unless it is shown that the candidate or his election agent authorized or consented to the committing of the illegal practice, or, if the illegal practice consisted of circulating a false statement and that he paid for it, or the court finds that the election of the candidate was procured or materially assisted in consequence of the false statement being made.

The conveyance of electors to the poll is dealt with in Section 7 of the Act of 1883. No payment or contract for payment is to be made for the purpose of promoting or procuring the election of a candidate at any election on account of the conveyance of electors to or from the poll whether for the hiring of horses or carriages or for railway fares or otherwise. If such a payment was knowingly made the person making it was guilty of an illegal practice.

And again by Section 14, it is an illegal practice to "let, lend or employ" any "public stage or hackney carriage or any horse or other animal kept or used for drawing the same or any carriage, horse or other animal (kept or used) for the purpose of letting out for hire," for the conveyance of electors to the poll.

## SECTION 17.

### Bribery.

This subject will be dealt with from the point of view of elections and their validity or avoidance, and in consequence the definition of "bribery" in Schedule V of the Electoral Rules will be kept in view.

Clause I in Part I of that Schedule, deals with gratifications emanating from the candidate himself or his "agent" (meaning apparently, his "election agent," and there must be an object or intent to induce.

And the *Explanation* shows that the "gratification" is not restricted to pecuniary gratifications, or gratifications estimable in money; and includes all forms of entertainment and employment for reward.

The terms of Clause I of Part I of Schedule V are express. The bribery may be effected by the candidate or his agent (which apparently means "election agent") or by any other person with the connivance of the candidate.

Amongst other objects the bribery may be effected to induce a person to stand or not to stand as a candidate. In point of time, therefore, bribery may be effected even before there is a candidate. And as a candidate must (under Rule 11 cited above) appoint an election agent before his own nomination takes place, the election agent also comes into existence before there is a candidate.

It is possible, therefore, for bribery to begin at an early stage; and it seems impossible to lay down how long before an election bribery may not take place. There seems to be no reason why it should not be possible even prior to the occurrence of the vacancy.

But as the gist of the offence of bribery is the motive to induce the person bribed to exercise his electoral right, it is obvious that the motive must be more difficult to prove if the alleged bribery took place long before the election or a vacancy.

The rules do not appear to provide for the express termination of the agency of the election agent; perhaps with design, because it would not be right that a person who once accepts the powers and responsibilities of an election agent should be able to escape from the responsibilities by contending that his agency had come to an end.

No doubt, for the practical purposes of supporting a candidate during his candidature, the most important portion of the duties of an agent come to an end when the results of the election are declared; but the responsibilities for all his acts must continue and even after the election is over, certain duties remain to be performed, such as, to cite only one instance, the filing of accounts.

In some earlier decisions in England, the view seems to have been taken that in order to effect bribery, money, or some other valuables or some consideration

“estimable in money” should be proved to have passed, but clause 1 of Schedule V puts it beyond doubt that for the purposes of that clause the term “gratification” is not so restricted.

A loan would apparently be a gratification estimable in money.

Employment for reward is not restricted to the employment of the person who is to exercise the electoral right. The phrase “and includes all forms of employment for reward” is wide enough to cover a case where a voter is influenced by the employment of a person in whom he is interested.

But the gift, offer or promise of the employment, or the receipt or agreement to receive the gratification must be coupled with the motive of influencing the vote.

A promise of payment of travelling expenses may be corrupt if the payment was to induce the voter and so amounts to bribery. But if the promise to pay the travelling expenses is not conditional it is not bribery. An unconditional promise to pay a voter’s expenses, leaving it to the voter to vote or not, as he likes, is not a promise made with the object of inducing him, as it is not a promise made with that view and is not directly calculated to cause the voter to act upon it with that view. See *Cooper v. Slade*: 25 L.J.Q.B. 324.

Of course if the sum paid by way of travelling expenses is largely in excess of the actual cost, it would be regarded as a colourable payment to conceal a bribe.

Payments to a voter for loss of time have been upheld, in English Courts, if made *bona fide* and if they are not merely colourable transactions.

A payment of the wages of the entire staff of a firm, on polling day without regard to their political opinions or leanings towards one candidate or another, has been held to be innocent. In such a case there would be no indication of any object to induce any particular servant to vote in any particular way.

In *Simpson v. Yeend*, 38 L.J. Q.B. 313, a candidate admitted that he called on a voter and said:—“I solicit your vote.” The voter said he did not intend to vote. The candidate did not offer him money but said the voter would be remunerated for loss of time. Cockburn, (C.J., said: We cannot doubt that the words admitted to have been used by the defendant, namely, that the voter would be remunerated for what loss of time might occur did, under the circumstances, amount to an “offer” or “promise” to procure or to endeavour to procure money or a valuable consideration to a voter “in order to induce him to vote at the election in question.” The expression “remuneration for loss of time” would necessarily convey to the apprehension of the voter that if he would vote for a particular candidate he should receive either directly from the person offering, or by his procurement, money or valuable consideration which he would not otherwise obtain, and any assurance of that kind which can only be so understood, is calculated to operate upon the mind of the elector as a direct inducement to vote for such candidate. This decision was given with the reference to the Act then in force 17 and 18 Vict. c. 102, s. 2, which provided as follows:—“Any one who shall give lend or agree to give or lend or shall offer promise or promise to pro-

cure or to endeavour to procure any money or valuable consideration to or for any voter.....in order to induce any voter to vote or refrain from voting .....is guilty of bribery."

Sometimes an act is done with more than one motive. It may be an act of kindness in itself, but it may be done just at a time to make the candidate popular in the constituency. In such cases the English decisions lay down the rule that the Courts will consider what was the main and real motive of the act; and what was the governing principle which prompted the act; whether it was done to corrupt the voters or from motives of mere kindness or charity.

An earlier view was that there is no harm in an act if a man has a legitimate cause for doing it, though he may also have an additional motive, which if it stood alone, would be an illegitimate one. If, for example, gifts were made by a person who is not a candidate, there would be nothing improper in them; and the fact that he did intend to stand as a candidate and knew that he would gain popularity by the gifts would not convert a harmless act into a corrupt one. That was the view taken by Bramwell B. in 1874.

This was referred to as rather a too lenient view in later cases. The whole of the evidence must be taken into consideration, and it must be decided whether the governing principle for doing any particular act was to corrupt the voters, or whether it was a mere act of kindness.

If the act is considered by the Court to be a real act of charity, but it is also considered that incidentally the candidate saw quite well that it would gain popularity for him, still, if the real governing principle was to do an act of charity, it would not be a corrupt practice.

An intention may be perfectly harmless when it is first thought of; as, for instance, if no election is pending or foreseen, and acts done at that time might be perfectly legal. But if an election were announced, it would not necessarily follow that the acts which were harmless at first would continue to be harmless.

By the Corrupt Practices Act, 1885, section 1, it is expressly provided that it is not illegal for an employer to permit electors in his employment to absent themselves for a reasonable time to vote, without deduction of wages, if that permission is given to all persons alike and not with the object of inducing them to vote for a particular candidate.

## SECTION 18.

### Undue Influence.

This includes interference with or threats to candidates or voters and attempts to induce them to believe that they will be objects of divine displeasure or spiritual censure.

It was considered to be "undue influence" if a peer of the United Kingdom interfered with an election by writing letters to constituencies in support of candidates favoured by him and a resolution of the House of Commons was passed so early in the year 1641, condemning the practice.

In 1779 the House of Commons similarly condemned the use of the powers of office by Ministers or other Government servants.

In 1854 the Corrupt Practices Act introduced the offence of undue influence; which has since been embodied in the Act of 1883, section 2 of which defines undue influence so as to include threats of force, violence or restraint.

Rioting and general disorders would not be "undue influence" for which a candidate could be held responsible, for, by Schedule V the act is to be done by the candidate or his agent or other person with the connivance of the candidate or his agent.

If a constituency or a particular portion of it were in a state of general turmoil so as to be dangerous to voters, the election would presumably be challenged on the ground that the result did not truly represent the will of the electorate. But the rioting would have to be more than a mere personal quarrel.

Similarly, the result would not truly represent the wish of the electorate if it had been brought by a wide-spread spiritual movement by the general circulation of propaganda and threats of spiritual censure.

If a customer of a business-man asks for a vote and on refusal sends in a large bill, with an intimation that no time for payment will be given, that would be a threat of injury.

The principle underlying the English decisions is that it is not competent to a creditor by threats of temporal or spiritual injury to induce a person to exercise his electoral right or by abduction, duress or any fraudulent device to impede or prevent the free exercise of the franchise. And by section 3, "undue influence" is made a "corrupt practice," together with treating, bribery and personation.

It has been said that the law cannot strike at the existence of mere influence and that it is really the abuse of influence which is struck at by the statute. And it is only abused when an inducement is held out.

It is obvious that a voter would be interfered with if damage be threatened to his business or profession or employment ; an instance of which would be a threat of dismissal of a servant on account of his political opinions.

A threat of violence to a particular person would also be within the definition of undue influence. A person may enforce a right, but he must not do so with the object of influencing a vote.

On this footing, a landlord may give his tenant notice to quit ; but if he does so with the object of inducing him to vote in a particular way, it is an interference and amounts to undue influence.

Though the interference may only be with a single trades-man or servant or tenant, the effect of it may be far-reaching, because others in the neighbourhood would immediately fear similar treatment.

The case of undue influence by threat differs somewhat from that of bribery or treating, because the bribery or treating can be done at almost any length of time before the election : and in some cases as a reward given subsequently. But if the threat is to have any practical effect, it must be subsisting when the election takes place, though possibly announced previously, so that if a threat to turn out a tenant be made long before an election but is withdrawn and the tenancy renewed before the election it can have no effective influence on the vote.

But the candidate who renews his custom with a business-man or extends the term of engagement of a servant or cancels a notice to quit and gives a new tenancy, must be careful not to do so with the object of influencing the vote or he may escape the difficulty caused by undue influence only to find himself charged with bribery.

Attempts to induce persons to believe that they will be the objects of divine displeasure or spiritual censure, have arisen mostly on the part of the clergy, when the various churches had more influence than they probably have at the present time. They consist mostly in the abuse by ministers of religion of their spiritual power : and the books shew that threats of excommunication and of exclusion from sacraments were not unknown. These would, of course, amount to undue influence.

Sermons preached from the pulpit, indicating that the support of a particular party was wrong according to the laws of religion and would involve spiritual punishment, would on this principle amount to undue influence.

This kind of corrupt practice is peculiar and of course difficult to establish because the elector goes to the poll freely and registers his vote with absolute freedom. And the religious precepts need not proceed so publicly as from a pulpit. They may be given privately to individuals.

In all such cases the voter registers his vote with an apparent freedom ; but in fact his will is not free and has been warped or influenced by the prospect of becoming an object of divine displeasure or spiritual censure.



The methods by which there may be direct or indirect interference, must be almost unlimited. Thus, if an election agent of a candidate possessing local influence and the power to injure opponents, were to boast publicly that he had the means of finding out exactly how every elector voted, the fear of being found out might easily interfere with the voting and lead to votes being given in favour of the influential candidate.

In more than one English case it appeared that the candidate had sent out cards or circulars to electors giving particulars of the coming poll, the names of the candidates, the type used for the name of the author of the circular being large and that of the opponent small. Against the name in large type was a cross, just as the elector was desired to mark it and other directions were given. Such circulars have been condemned but have apparently not been held to constitute an offence in the absence of evidence that any electors had been impeded or prevented by them in the free exercise of the franchise.

## SECTION 19.

### Treating and Personation.

#### *Treating.*

Section 171 E of the amended Penal Code deals with "bribery by treating," and defines it in the Explanation as follows:—

"Treating means that form of bribery where the gratification consists of food, drink, entertainment or provision."

The offence is not "treating," but "bribery by treating:" so that there must be "bribery," that is, a gratification must have been given or promised with the object of inducing a person to exercise or refrain from exercising an electoral right, only, the form of the gratification is food, drink, entertainment or provision. It is punishable only by fine.

In Rule 44 the term "treating" is defined as follows for the purposes of the Commissioners' Report:—

"The incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting."

In the English Corrupt, etc., Practices Act of 1883 the offence of "treating" is given an elaborate definition (in section 1) in which the gist of the offence is that a person must "corruptly," either during or after an election directly or indirectly provide or pay the expense of providing any meat, drink, entertainment or provision for the purpose of "corruptly" influencing a vote or abstention from voting or on account of a vote or abstention having been given or done.

Moreover, in the English Act, the voter who corruptly accepts the entertainment is also guilty of "treating."

It is clear that the person treating and the person treated need not have any direct communication and that it is none the less "treating" if it is done through the agency of third persons.

Though the treating must have been done "corruptly" to be an offence under the English Act it has been laid down in the House of Lords that the term "corruptly" as used in the English Act does not really mean wickedly or immorally, or dishonestly, or anything of the sort, but only means doing the act with the object of doing that which the Legislature has forbidden. (*Cooper v. Slade*, 6 H.L. C. 764.)

It has been pointed out in one of the English cases that there is a practical difference between "bribery" and "treating" in this way:—If you "bribe" a man to vote for you in the sense in which the term "bribe" is ordinarily understood, you bargain with him and he gives you his vote in exchange for your money. This involves the position that he is really hostile to you and you pay him because he would not vote for you if you didn't. You would not pay a man for a vote that he all along intended to give you. But you could very naturally "treat" such a man.

This leads to the question why treating should be forbidden and the solution seems to be that if the object of treating is to confirm the votes of your guests and to gain for yourself a favourable reputation for liberality and keep up the party zeal of those who ostensibly support you and prevent them from wavering, the result is that the object of your treating is to influence the exercise of the electoral right of voters, which is forbidden.

The question whether the entertainment amounts to "treating," being one of fact, depends on the circumstances of each case.

For example where a candidate gave a school treat to 10,000 people in his grounds, it was held that a *prima facie* case of treating had been made out and required explanation. Persons were invited who were not political supporters, in addition to those who were. It was shown that it was customary to have this treat in the respondent's park though more guests had been invited on this occasion. The candidate had been elected in July and the school-treat was in August so that it might have been a mere celebration of victory, but a general election was coming in November. In the result the finding of the election court was that there was no corrupt intention to influence votes and the election was not upset.

In another extreme case the candidate gave an entertainment in a Town Hall in October to meet the retiring member to which he invited all his friends, announcing that there would be refreshments and music. The election was to take place in the following January. The entertainment was attended by over 700 people: but on the facts it was held that there was no intention to influence votes and therefore the entertainment did not amount to "treating."

Giving entertainment before an election is obviously closer to "treating" than giving it when the election is over. The votes have been given in the latter case and therefore would not be influenced by the entertainment unless it had been previously promised. Entertainment by way of gratitude for votes already given might, of course, be given with the further object of maintaining the interest and loyalty of the elector in the candidate. But that would be more likely to affect and imperil the next future election than the past.

It is not impossible, however, for entertainment after an election to amount to "treating" because the definition of bribery includes the giving of a gratification as a reward to an elector for having voted or refrained from voting.

An election was avoided, however, on the ground of treating where a candidate or his relatives spent nearly £ 200 on a garden party prior to the election where refreshments were served. Speeches were made and some electors who supported the opposite party were invited and attended. The evidence showed that though the entertainment had been nominally given by a political body, it had in fact been arranged by the candidate's political agent.

Where entertainments were commenced at a time when the motive in giving them could not have been corrupt it is necessary to show a change of motive in order to establish "treating." For example, if a person who occupies a leading position in a locality but is not a candidate inaugurates a series of entertainments, there can be no corrupt motive. And if that person afterwards becomes a candidate and continues the old hospitality, there must be evidence to show that his intentions have become corrupt.

Charitable acts are of course liable to be misconstrued if done at a time when a candidate is seeking or contemplating election.

Tickets entitling the donees to food, may perhaps be given away with impunity but if a vote is canvassed for at the time of the gift, it would clearly amount to a gratification with the intention of inducing a voter to give his vote which would be "treating."

### Personation.

The definition of this corrupt practice is given in Schedule V and may be described quite generally as applying for a voting paper under a false name or even under the true name of the applicant, he having already exhausted his right by voting at the election.

The definition in Part IX A of the Penal Code is similar: and so are the definitions in the English Ballot Act, 1872, and the Corrupt Practices Act, 1883.

The offence is complete when the application for the voting paper has been made.

### Practice.

In the Chelsea Country Council Election Petition, 14 T. L. 343, Grantham J., had ordered particulars of alleged "treating" as a corrupt practice and also at common law, "if known" of the names of all persons treated by whom and the place or places where each act of treating was alleged to have been committed. The respondent, (the elected candidate) appealed and contended that the order should not have been qualified by the words "if known" and that the petitioners who sought to avoid the election on the ground of treating must show that the person treated was a person to whom the section was applicable and that the respondents were entitled to know the names of the persons who were alleged to have been treated. *Maude v. Lowley*, L.R. 9 C.P. 165, was referred to and distinguished on the ground that the words "so far as known" had been allowed by consent to be added to the order. It was contended that since *Lenham v. Barber*

10 Q.B.D. 283, those words had been omitted. The Lords Justices said that even if the words "if known" were omitted from the order, they would probably in this case be read into the order; and the appeal was dismissed.

In *Lenham v. Barber*, L.R. 10 Q.B.D. 293, Pollock B., said that it had been his practice to omit the words "so far as is known" from orders for particulars, because they seemed unnecessary as a person who gives particulars can only do so as far as is known and if the words were inserted they might be taken as a warrant for unduly limiting the particulars. He refused to order the words to be omitted.

## **SECTION 20.**

### **Election Agents and Returns of Expenses.**

This subject is also dealt with in Part IV of each set of Electoral Rules, the Rules being common to all.

Rule 11 (5). Before a candidate is nominated he must make in writing and sign a declaration appointing either himself or some other person not disqualified for the appointment to be his election agent. No candidate is to be deemed duly nominated unless such declaration has been made.

Rule 17. A person cannot be appointed as an election agent if he is himself ineligible for election as being subject to any disqualification by reason of a conviction for an offence under Chapter IX A of the Penal Code, namely, for bribery, undue influence, personation, illegal payments, or failure to keep accounts. He is also disqualified if he has been a candidate or election agent at an election to any legislative body constituted under the Government of India Act and has failed to lodge any prescribed return of election expenses or has lodged a false return. Any of these disqualifications may however be removed.

Rule 18. The appointment of an election agent even if he be the candidate himself can only be revoked by a writing signed by the candidate and lodged with the officer receiving nominations. It operates on the date on which it is so lodged.

In the event of any such revocation or of the death of an election agent, whether it occurs before, during or after the election, the candidate must appoint another and declare his name to the nominating officer.

Rule 19. Returns of election expenses signed and declared by the candidate and by his election agent are to be made within 30 days from the publication of the result of the election. These are to be in the forms specified in Schedule IV to the

Rules. If a candidate is unable to sign and affirm the return owing to his absence from India, it may be signed, declared and lodged by the election agent only and the candidate must lodge a declaration within 14 days of his return to India. Every such return is to contain a statement of all payments made by the candidate or by his election agent or by any persons on behalf of the candidate or in his interest for expenses incurred on account of or in respect of the conduct and management of the election and a further statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

Returning officers are to advertise and affix notices of the lodging of such returns and any person may inspect them on paying a fee of 1 rupee and may obtain copies of them on payment of copying charges.

A record is also to be prepared showing the names of all candidates and their election agents and the dates on which their returns of election expenses have been lodged.

Rule 20. The whole of this subject is dealt with fully hereafter in the section relating to the return of Election expenses. Maximum scales of election expenses may be fixed by the Governor-General in Council by notification in the *Gazette*. These are to be applicable to any election held after the first election under the Electoral Rules.

The Governor-General in Council may also prescribe the numbers and description of persons who may be employed for payment in connection with elections held under the Electoral Rules.

Rule 21. Every election agent is to keep separate and regular books of account for each election for which he is appointed an election agent, showing all the particulars which are prescribed by Rule 19 and Schedule IV of the Electoral Rules whether such expenditure is incurred by the candidate or by the election agent or by any person under the direction of either.

### **The Candidate.**

A definition of who is a candidate is given in Section 171 A of the new chapter in the Penal Code referred to above. By that definition, a

“candidate” is a person who has been nominated as a candidate at any election and includes a person, who, when an election is in contemplation, holds himself out as a prospective candidate thereat ; provided that he is subsequently nominated as a candidate at such election.

A special definition of a ‘candidate’ is however given in Part VII, Rule 30 of the Electoral Rules, for the purposes of cases arising in Election Petitions. This is set out and dealt with in its appropriate place.

### **Returns of Election Expenses.**

This subject is dealt with in Schedule IV of the Electoral Rules. The provisions of Rule 19 have already been summarized.

Under the head ‘receipts’ must be shown every person (including the candidate) club, society or association from whom any money, security or equivalent of money was received in respect of expenses incurred on account of, or in connection with or incidental to, the election, and the amount received from each person, club, society or association separately.

Under the head of ‘expenditure’ must be shown :—

- (a) the personal expenditure of the candidate incurred or paid by him or his election agent or any person including travelling and all other personal expenses incurred in connection with his candidature ;
- (b) the name, rate and the total amount of the pay of each person employed as an agent including travelling and all other personal expenses incurred in connection with his candidature ;
- (c) travelling and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent) clerks or messengers ;
- (d) ditto of persons whether in receipt of salary or not, incurred in connection with the candidature and



whether paid or incurred by the candidate, his election agent or the person so travelling;

(e) the cost, whether (actually) paid or (merely) incurred of (1) printing, (2) advertising, (3) stationery, (4) postage, (5) telegrams and (6) rooms hired for public meetings or committee-rooms ;

(f) any other miscellaneous expenses, whether (actually) paid or (merely) incurred.

It is understood throughout that all liabilities remaining unpaid at the date of the return are to be set out, and vouchers are to be produced for all sums of Rs. 5 and over, excepting those for which from their nature receipts cannot be obtained, such as for Railway tickets and postage stamps. The liabilities outstanding and unpaid are to be set out in separate lists.

Special forms of affidavit are given in the amended Schedule for the declaration of the candidate and by the election agent.

The return is to include expenditure "in connection with his candidature." So it is material to know when the candidature begins ; and in view of the definition of "candidate" which has already been referred to, the "candidature" in India would presumably commence at the date of nomination or at the date from which the candidate has in fact held himself out as a prospective candidate.

A candidate may very well hold himself out as a prospective candidate even before the seat for which he proposes to stand for election is actually vacant.

It is useful to refer to the English definitions of the expression "candidate" with a view to seeing how far the English decisions may throw light on the position of the candidate in India.

In Section 3 of the English Parliamentary Elections Act, 1868, since repealed, a "candidate" was defined as meaning "a person elected and any person who has been nominated or declared himself a candidate at an election." This was replaced by Section 63 of the English Corrupt Practices Prevention Act, 1883, in which a "candidate" means "any person elected.....and any person who is nominated as a candidate at such election or is declared by himself or by others to be a candidate on or after the day of the issue of the writ for such election or after the dissolution or vacancy in consequence of which such writ has been issued."

The earlier English definition of 1868 more closely resembled the Indian definition ; because by it a candidate included a person who had "declared himself a candidate for election," just as the Indian definition includes a person "who holds himself out as a prospective candidate,"

No doubt can arise under the English definition of 1883 because by it a person only becomes a candidate by declaration on or after the day of the issue of the writ for the election or after the dissolution or vacancy in consequence in which the writ had been issued.

By Section 28 of the English Corrupt and Illegal Practices Act, 1883, the expenses must be incurred "on account of or in respect of the conduct or management of the elections," thus leaving it to be decided on the facts of each particular case when the election commenced, whereas under the Indian Electoral Rules, as already stated, the expenditure to be returned by the candidate is "expenditure in connection with his candidature" which naturally comprises expenses as from the date when his candidature commences.

In the *Walsall Case* in 1892 the candidate had announced himself as a candidate five months before the date of the actual election.

In the *Stepney Case* in 1892 two meetings were held some weeks before the dissolution but it was held that the electoral campaign had by then commenced and therefore the costs incurred by the meetings were election expenses.

A decision dealing with a 'prospective candidate' is the *Elgin Case* where the candidate had been 'a prospective candidate' for 16 months before the dissolution. One learned judge held that the candidature began from the date when the candidate had become 'prospective' but the other learned judge differed. In the *Great Yarmouth Case* there was another difference of opinion, one learned judge being of opinion that "election expenses" began to be incurred as soon as a candidate had been accepted as "prospective candidate" which was 18 months before the election.

A mere invitation, however, to become candidate two years before the dissolution and not accepted but at the same time not refused, was held to be sufficient to constitute the commencement of a candidature.—*The Lancaster Case*, 1896.

In many of the English decisions it was held that the candidature commenced at dates varying from some months up to as much as three years before the election.

It is obvious that expenses incurred in connection with candidature must be for the most part incurred either prior to or during the election, but some clerical work connected with the making of returns and settling outstanding liabilities must necessarily be done subsequently and be included in the election expenses.

A doubtful case is that in which a meeting has been held or other expenses incurred with the object of inducing a person to become a candidate at an election. The question whether the costs of such a meeting or the other expenses are "election expenses" is a question of fact to be determined on the evidence in each case, (*Birkbeck v. Ballard*, 54 L.T. 625).

Money paid to persons to keep order at meetings is an expense connected with the management and conduct of an election within the meaning of Section 28 of the Corrupt Practices Act, 1883. (*Packard v. Collings*, 54 L.T. 619.)

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Money paid to persons to keep order at meetings is an expense connected with the management and conduct of an election within the meaning of Section 28 of the Corrupt Practices Act, 1883. (*Packard v. Collings*, 54 L.T. 619.)

A candidate at the English general election of 1885 started a newspaper in 1885 which ceased to appear in January 1886. It was held that losses in connection with the newspaper need not be returned as election expenses. (*Crossman v. Gent-Davis*, 54 L.T. 628).

The case is however shortly reported and the decision seems to have turned largely on the fact that the person who filed the election petition called the candidate and his agent, and treated them as hostile witnesses and extorted admissions from them that the newspaper had been established to support the candidate and £ 800 had been lost on it. The court dismissed the petition as filed and stated that it was not a proper method of conducting an election petition to call the candidate and his agent and treat them as hostile witnesses.

Where persons who have other employments are paid to do clerical work for the candidate or to deliver bills at an election it was held that they did not necessarily become clerks or messengers within the meaning of the English Corrupt Practices Act, 1883, which limited the number of persons who could be legally employed for payment.

But it has been held that clerks might be substituted for each other during an election provided that the maximum number employed on any particular day did not exceed the maximum allowed. (*Walsall Case*.)

English decided cases and sections of English Acts are summarized in 12 Hals. 265 as authorities for the following propositions relating to a "candidate":— Having become a candidate it is often of great importance to ascertain the date upon which the person's candidature begins, so as to fix the commencement of his responsibility. A person may become a candidate within the meaning of the Acts before a vacancy occurs, or the dissolution of Parliament, or the issue of a writ (to the returning officer to hold the election) and before being accepted as a candidate by any political association. But a person does not necessarily become a candidate when he forms the intention to become candidate. He may, however, become a candidate as soon as he begins to incur any expenses on account of an election. "An election" means a definite election within the knowledge and contemplation of the candidate, although the date of that election may be quite uncertain. The period, however, during which a person should be held responsible as a candidate must be confined within reasonable limits of time, but the actual date upon which an election has been fixed is immaterial and an earlier date may be taken as the commencement of a person's candidature and it depends upon the circumstances and facts of each case how far back that date may be. The question of the date of the commencement must depend on facts existing on that date; it cannot depend on post facto circumstances. Thus the expenses of obtaining a candidate or of inducing an individual to become a candidate, are very different from the expenses of procuring his election when obtained. But if the nominal object of expenses were to obtain a candidate, while the real object was to promote the election of an individual, the expenses would be within the Act.

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